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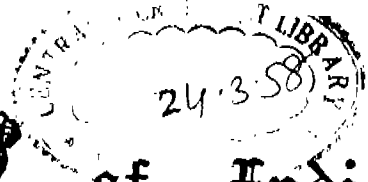

The Gazette of India

EXTRAORDINARY
PART II—Section 3—Sub-section (ii)
PUBLISHED BY AUTHORITY

No. 30] NEW DELHI, THURSDAY, MARCH 20, 1958/PHALGUNA 29, 1879

MINISTRY OF LABOUR AND EMPLOYMENT

NOTIFICATION

New Delhi-2, the 15th March 1958

S.O. 261.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, Lucknow in the dispute between the Indian Airlines Corporation and their workmen.

IN THE NATIONAL INDUSTRIAL TRIBUNAL, LUCKNOW

PRESENT

Sri Justice Bind Basni Prasad, M.A., LL.B.—*Presiding Officer.*

The Indian Airlines Corporation.

Versus

(1) The Air Corporation Employees' Union, Bombay Airport, Santa Cruz, Bombay—29.

(2) The All India Aircraft Engineers' Association, Dum Dum Airport, Calcutta.

(3) The Indian Commercial Pilots' Association, 5-6, Mount Road, Madras—2.

(4) The All India Airlines Radio Officers' Association, 5-6, Mount Road, Madras—2.

(5) Other workmen of the Indian Airlines Corporation not represented by the aforesaid union.

APPEARANCES:

Sri S. D. Vimadlal, Bar-at-law, and Sri Anand Prakash, Bar-at-law	For the Indian Airlines Corporation.
Sri D. H. Buch, Advocate	For the Air Corporation Employees' Union and for the All India Aircraft Engineers' Association and also for the individual employees who represented their case to the Tribunal, except Sri Devi Prasad Khaitan and Sri L. P. Bhageria.
Sri Y. Kumar, Advocate	For the Indian Commercial Pilots' Association and the All India Radio Officers' Association.

AWARD

By the order dated the 10th June, 1957, the Central Government, in exercise of the powers conferred by sub-section (1A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), referred to this Tribunal 67 demands of workmen of the Indian Airlines Corporation for adjudication. Twice this order was amended by the Government, firstly on the 13th August, 1957, and secondly on the 9th November, 1957. Now in all there are 58 demands and some of them contain several sub-divisions also. They cover a wide range of conditions of employment.

2. This award deals with all the demands, except the following 4, which relate to individuals:—

PART II

(1) "Whether the services of Shri N. N. Malik and Shri K. K. Chhabra have been wrongfully terminated, and whether they should be reinstated in their posts with full rights?"

(2) "Whether Shri N. D. Sharma, Shri P. K. Chhabra, Shri T. S. Sharma, Shri Ishwar Dass and Shri A. D. Taneja have been transferred to out stations at Rajkot, Bhopal, Jodhpur, Jaipur and Gwalior, respectively without adequate reasons and with a view to victimising them, and whether they should be called back to their original station, *i.e.*, Delhi, and whether they should be reinstated in their original departments in the Engineering Workshop?"

(3) "Whether, withholding increments in the cases of Shri Multani Ram, Shri D. Couts, Roshan Lall and Teja Singh should be restored forthwith?"

PART III

(7) "Whether Shri Kishan Chand, Driver, Jaipore, who has been acquitted by the Court, should be reinstated?"

I could not deal with these 4 demands, as the time at my disposal before completing the age of 65 years, which is the limit fixed for the Presiding Officer of the National Industrial Tribunal, by section 7C of the Industrial Disputes Act, 1947, was limited, particularly in view of the fact that I had also to investigate the dispute regarding the rationalization in the three textile mills of Kanpur and had to submit the report thereupon to the U.P. Government by 31st December 1957.

3. The Indian Airlines Corporation (hereinafter referred to as "Corporation") informed that there were 9,158 employees in it. Of these, 777 were alleged not to be workmen as defined in clause (s) of section 2 of the Industrial Disputes Act.

4. There are following 4 unions of employees of the Corporation with the membership noted against each, as intimated by them:—

(1) The Air Corporation Employees' Union (hereinafter referred to as "Employees' Union".	6,210
(2) The All India Aircraft Engineers' Association (hereinafter referred to as "Engineers' Association.")	406
(3) The Indian Commercial Pilots' Association (hereinafter referred to as "Pilots' Association.")	290
(4) The All India Airlines Radio Officers' Association (hereinafter referred to as "Radio Officers' Association.")	150
TOTAL:	7,056

5. In the order of reference dated the 5th June, 1957, it was stated that "an industrial dispute exists or is apprehended between the employers in relation to the Indian Airlines Corporation and their *workmen*." Hence not only the aforesaid 4 unions were called upon to file their statement of claims, but notices were issued also to the employees of the Corporation who were not members of these unions and they were served in the manner provided by rule 20(2) of the Industrial Disputes (Central) Rules, 1957 by affixation at or near the main entrance of the establishments of the Corporation spread in this country or beyond it where it operates.

6. The Corporation, the Employees' Union and the Engineers' Association filed detailed statements of their claims. The Pilots' Association and the Radio Officers' Association first intimated that their interest would be "duly safeguarded" by the Employees' Union. The Pilots' Association, in addition, filed a note setting out matters in respect of which the Corporation had not implemented the agreement arrived at with it on the 16th February, 1956 at New Delhi. Later, Sri Y. Kumar, Advocate appeared for them and he filed a statement of their claims. The employees at Siliguri (Assam) collectively and 9 individual employees from other places also made representation to the Tribunal.

7 Section 11(1) of the Industrial Disputes Act, 1947 provides that "subject to any rules that may be made in this behalf..... a National Tribunal shall follow such procedure" as it may think fit. Keeping in view the provisions contained in Part III of the Industrial Disputes (Central) Rules, 1957, the procedure adopted by me was that that at the first session of hearing held at Delhi from 17th September to 26th September, 1957, I examined the parties to clarify the issues and to pin them down, following the principles contained in order X, rules 2 and 3 of the Code of Civil Procedure (V of 1908). At the second session of hearing, held at Delhi from the 11th November to the 23rd November, 1957, I called upon the parties to produce their oral and documentary evidence and started the hearing of arguments on each demand. This was continued at the third session of hearing held at Lucknow from the 2nd January to the 14th January, 1958 and proceedings were fully recorded. They run into 350 pages. Copies of these proceedings were supplied to the parties from day to day on payment of the prescribed fees. I may say that this procedure has helped a great deal in the elucidation of the disputed matters and in the speedy disposal of this big case.

8. It is necessary first to decide the scope of enquiry in this adjudication. Some individual employees who were taken over by the Corporation from the ex-airlines companies filed claims that the Corporation wrongly categorized them and they should be given higher grades. Soon after the nationalization of the Air Transport Industry, a Services Committee, presided over by Sri W. R. Puranik, retired judge of Nagpur High Court and assisted by Sri S. B. Bapat, I.C.S., Joint Secretary, Ministry of Home Affairs and Sri G. P. Shahani, Secretary, Air Transport Licensing Board, as members, appointed to make recommendations on:—

"(i) rationalization of pay scales for different categories of personnel and formulation of suitable wage structure;

(ii) the procedure to be followed in bringing the existing personnel on the approved new pay-scales;

(iii) the principles to be followed for determining seniority as between personnel of same category belonging to different companies doing more or less similar duties; and

(iv) formulation of common service conditions in the matter of leave, holidays, t.a. rules, insurance facilities, bonus, allowances, provident fund, gratuity, pension schemes, residential accommodation, etc. etc."

In para. 16 at page 6 of the report, Ex. U-6, the Committee laid down certain broad principles for rational wage structure. At pages 8 to 11, the Committee suggested a wage structure in accordance with the principles enunciated by it. They fixed 19 grades, beginning with basic pay of Rs. 50-2-80 and ending with Rs. 2,000-125-2,250. The various categories of employees taken were fitted in by the Corporation in these 19 grades. The individual employees who have represented to this Tribunal claim that they should have been put in higher grades than those in which they have been placed. Having regard to the language of demand No. 2, relating to categorization, it seemed to me that the consideration of the cases of the individual employees was beyond the purview of the Tribunal. The matter was discussed on September 17, 1957. Demand No. 2 raises general principles which should have been observed or may in future be observed and the procedure which should be followed by the Corporation in the categorization of the employees. It does not confer powers upon this Tribunal to deal with individual cases. There are more than 9,000 employees in the Corporation and the demand does not contemplate that the case of each employee should be reviewed so far as categorization is concerned. Of course, the points of principles raised by the individual employees can be considered and incorporated in the general principles which may be followed in regard to categorization. The individual employees who appeared before this Tribunal were accordingly heard from this point of view.

9. The next question which arises is whether pilots, radio officers and the aircraft engineers, drawing more than Rs. 500 per month, are "workmen" and fall within the purview of this Tribunal. On behalf of the employees, it was contended that the pilots, radio officers and the aircraft engineers perform skilled manual or technical work and as such they should be considered as "workmen", irrespective of the salary or wages drawn by them.

10. Taking up first the question of pilots, Sri Vimadlal on behalf of the Corporation stated that in every aircraft the flying crew consists of two pilots, one radio officer and one air hostess or male steward. Sometime in addition there may be a flight engineer or navigator or both. Of the two pilots one is the chief pilot and the other is co-pilot. He conceded that the co-pilot fell within the definition of a "workman", but in regard to the chief pilot, he contended that as he exercised control over the passengers, his position was that of the captain of a ship and he should not be regarded as a "workman".

11. A pilot's main duty is to drive an aircraft. He performs a highly skilled technical work. The difference between a driver of the aircraft and that of any other machine, *e.g.*, motor car or a steam engine is one of the nature of machine to be driven and one of the nature of training required for the work. The main work of a chief pilot is to drive the aircraft. All those who have undertaken air journey know it well that he hardly spends any time in exercise of control over the passengers. His position cannot be compared to that of the captain of a ship. A ship contains a much larger number of passengers and greater quantity of cargo. The trip of a ship is much longer in duration than that of an aircraft. A ship has many departments which an aircraft has not, *e.g.*, medical. According to the wage structure given in the Services Committee Report, a senior captain of an aircraft can rise upto Rs. 1,550 per

mensem. Besides this basic wage, he has many allowances also. He is a technical worker. He does work with his own hands. The definition of "workman" given in section 2(s) of the Industrial Disputes Act, 1947 brings within its ambit "any person, employed in any industry to do any technical work for hire or reward" irrespective of the salary drawn by him. This is in contradistinction with persons employed in a supervisory capacity who fall within the definition of a "workman" only when they draw wages not exceeding Rs. 500 per mensem. I hold that all pilots, whether co-pilot or chief pilot, are "workmen" and they fall within the purview of this reference.

12. As regards the radio officers, it was conceded on behalf of the Corporation that they are "workmen".

13. As regards the aircraft maintenance engineers, the point was argued at great length and oral and documentary evidence was adduced by the parties. The Corporation admitted that having regard to the language of the amended definition of "workman", the engineers upto grade 11 fell within this definition as their wages are less than Rs. 500 per mensem. But in regard to the engineers above this grade, it was contended that they are not workmen. The Engineers' Association admitted that the engineers in grade 16 and above do not fall within the definition of "workmen" as they performed supervisory duties of technical personnel. The scale of grade 16 engineers is Rs. 1,250-60-1,550. In view of these admissions, the issue narrows down to the question whether aircraft engineers in grades 12 to 15 are "workmen".

14. Sri P. V. Muthuswamy who is the Secretary of the Engineers' Association and who is himself an Aircraft Maintenance Engineer (hereinafter referred to as 'A.M.E.') in grade 13 was examined on behalf of the Engineers' Association and Sri A. H. Mehta, who is at present officiating as Chief Engineer in the Corporation was examined on behalf of the Corporation, in regard to the work and duties performed by the A.M.Es. Certain documents were also produced by the parties in support of their respective contentions. These will be referred to hereafter.

15. Formerly the definition of "workman" was confined only to such persons as did "manual or clerical work" whether skilled or unskilled. Those doing "supervisory or technical" work were excluded from the definition. In 1956, the definition was amended so as to cover supervisory and technical personnel also and thus its scope was widened. The amended definition is as follows:—

> "1(s) "Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
>
> (i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties, attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The definition, on the face of it, excludes supervisory staff drawing wages exceeding five hundred rupees per mensem or those who by the nature of the duties, attached to the office or by reason of the powers vested in them perform functions mainly of a managerial nature. It is significant that so far as the technical staff is concerned, they are not excluded from the definition even though they may be drawing wages exceeding rupees five hundred per mensem.

16. Sri Vimadlal on behalf of the Corporation, however, contends that it is necessary to view the enactment in retrospect, the reason for enacting it, the evils it was to end and the object it was to subserve. He argues that viewed in this light, all technical employees irrespective of the pay drawn by them should not be classed as "workmen". He argues that it would be illogical to hold that a member of the technical staff drawing, say Rs. 3,000 per mensem, should be held to be a "workman". Such high-paid members of the staff, according to him, can protect their interests and do not require the protection afforded by labour laws, *e.g.*, The Industrial Disputes Act, 1947. He relies upon the decision of the Supreme Court in Newspapers Ltd. *Versus* Industrial Tribunal, Uttar Pradesh and others, 1957(II) LLJ, page 1. It is true that statutes should be interpretted so as to yield logical results, but courts or tribunals cannot interpret a statute so as to nullify the effect of the language used in a statute. When the definition of "workman" places no restriction with reference to the amount of wages, on the members of the technical staff as it has done in the case of the supervisory staff, I fail to see how in interpretting that definition, I can place such a restriction. If it had been the intention of the legislature to exclude the technical staff drawing wages upto a certain limit from the definition of "workman", the legislature would have so stated in the definition itself. It is admitted by the Engineers that those in grade 12 have emoluments more than Rs. 500 per mensem. The maximum basic wage of an engineer in grade 15 can be Rs. 1,250 per month. Thus we are not concerned with such high-paid engineers as draw basic wages over Rs. 1,250. Engineers in grade 16 and above who draw basic wages between Rs. 1,250 and 2,250 are admitted by the engineers themselves to be not workmen, presumably because they perform supervisory functions of technical personnel. They, however, urge that engineers between grades 12 to 15 do not perform any supervisory functions and are thus workmen. It may be mentioned here that on behalf of the Corporation it was admitted that Co-pilots drawing more than Rs. 500 per mensem are workmen, presumably because of the technical nature of the work performed by them and their not having any supervisory function.

17. The second line of argument on behalf of the Corporation is that the word "technical" in the definition means routine technical work and not technical work of a higher order and in this connection reliance is placed upon a decision of the Labour Appellate Tribunal of India in the Burmah Shell Oil Storage and Distributing Co. of India Ltd. *Versus* their workmen, 1955(II) LLJ, page 228. That was a case in which the issue related not to a technical worker, but to a person performing clerical

duties. After referring to the dictionary meaning of the word "clerk", the Tribunal observed:—

> "Both manual work as well as clerical work, in the sense in which these terms must be taken to have been used in S. 2(s), connote more or less routine work, skilled or otherwise, which does not require any material amount of initiative in its performance, the employees entrusted with such work not being required to perform substantial duties of a supervisory, directional or controlling nature.
>
> To sum up, the question whether an employee is a "workman" or not is to be decided according to the principles above enunciated, with reference to the nature of his duties irrespective of his designation. Each case, therefore, has to be decided on the facts as established by the whole of the evidence led before the Tribunal."

18. Sri Vimadlal argues that just as only those manual and clerical workers have been held to fall within the definition of "workman" who do routine manual or clerical work, so only those technical workers should be held to fall in this definition as do routine technical work. In the first place, emphasis on the routine nature of the work was placed in the Burmah Shell case when considering the duties of a clerk, in the dictionary meaning of which the word "routine" occurs. Clerks as a rule do routine nature of work which does not require any great initiative.

19. A special Bench of the Labour Appellate Tribunal dealing with the Banks dispute has very thoroughly discussed the scope of the definition of "workman" as it stood before the amendment. After reviewing all the case law on this point, it has summed up its conclusions as follows in Chapter XII of its award (para. 205):—

> "205.—In view of these decisions the test of "directional and controlling power" must be recorded as of doubtful validity. The relevant question is not whether the employee is an officer, but whether the employee performs clerical work so as to place him in the category of "workman" under the Act. The approach, therefore, should be not from the angle of testing whether the employee is an officer but from that of examining the duties to be performed by the employee and deciding whether they are in the main clerical or not. For the purposes of administration a gradation between employees is unavoidable and the duties of a clerk are not inconsistent with a limited amount of supervision and control over other employees. But in each case it will be essential to examine the facts and to determine what is the nature of the work. The question is essentially one of fact and no general answer to cover all cases is possible."

20. A member of the technical staff, to whatever grade he may belong, however, performs work which often requires initiative. Thus if a snag is found in a machine, the member of the technical staff entrusted with the duty of removing the snag has to exercise his mind to find out what the cause of the snag may be and how to remove it. The qualifying word "routine" used in the Burmah Shell case or in other cases when discussing the question whether or not a person performed work of a clerical nature can hardly be applied when considering the question whether a member of the technical staff falls within the definition of "workman". Often when there is a defect of a major type in an aircraft, the technical staff has to think and to devise ways for the removal of such a defect.

21. Then, in the present case, the main part of the duties of the A.M.Es. is really of a routine nature though of course of a technical nature. Checks I to V on the record show this. They have to check up the various parts of the aircraft periodically.

22. Reliance is also placed on behalf of the Corporation upon certain observations in the Services Committee Report, Ex. U-6 wherein the engineers have been described as "officers" and doing work of supervisory nature, *e.g.*, at pages 13, 14, 87 and 88. Dealing with the fixation of the grades, the Committee observed that grades 10, 11 and 12 had overlapping salary ranges for staff discharging duties and responsibilities similar to those of junior officers in Government and private concerns. Grade 13 represented, according to the Committee, intermediate stage between junior and senior officers and grades 14 and 15 were for senior officers. At page 87 it observed:—

> "We recommend that the A.M.Es. 4 and Junior Inspectors should, like junior officers in other departments, be placed in the three grades 10, 11 and 12, carrying the pay scales of Rs. 250-15-370, Rs. 320-15-440 and Rs. 400-15-550 respectively. All new entrants will start in grade 10 and promotion to grades 11 and 12 will depend upon the rapidity with which they can acquire the prescribed qualifications and professional competence. We have separately indicated in para. 69 at page 28 dealing with licence allowance, supplemented by appendix IV, our ideas as to the minimum qualifications for A.M.Es. in different grades."

At page 88, the Committee described A.M.Es. III, II and I as officers. Dealing with A.M.Es. I, the Committee observed at page 89 that they should be comparable to senior officers from amongst whom selections will be made for the junior administrative posts. It will be seen on a perusal of the report of the Services Committee that A.M.Es. V to I were not intended by the Committee to hold administrative charges. The Committee was dealing with the wage structure of the employees in all the departments of the Corporation. When it used the word "officer" in its report, it did so in contradiction with the word "operative". Having regard to the scale of salaries the Committee was prescribing for the A.M.Es. it used the word "officer" for them. The question whether or not the A.M.Es. fell within the definition of a "workman" was not before the Committee and in the language used by it, it did not take into consideration the fact that the language used by it may deprive the technical personnel of the protection which the law has given them. They were considering staff of all the departments and in that context they said that grades 7 to 9 are the junior and senior grades of supervisory staff in all departments and persons in grades 10 to 12 were junior officers. Having regard to the context in which the Services Committee drew up its report, its description of A.M.Es.. as "officers" or as belonging to the supervisory staff should serve no guide for the determination of the question whether the A.M.Es. fall within the definition of "workman". The crucial test is to examine the facts and to determine what is the nature of work performed by the A.M.Es. and not whether they are officers. As observed by the Special Bench of the Labour Appellate Tribunal in the Banks dispute case, "the test of directional and controlling power is of doubtful validity" and it is not relevant to enquire whether an employee is an officer. We must see whether the A.M.Es. perform the work of a technical nature so as to place them in the category of "workman".

23. Now it is an admitted fact that the duties of the A.M.Es. have not been laid down by the Corporation. The Indian Aircraft Manual, Ex. E-14, however, gives an indication of the duties to be performed by the A.M.Es.

Rule 57 at page 40 requires that every flying machine should be provided with a certificate of airworthiness, and every engine of such flying machine shall be periodically overhauled and after every such overhaul, and after the completion of any repairs to, or modification of, the flying machine or engine, the flying machine shall be inspected and certified in accordance with the provisions of section E of Schedule III by the appropriate person licensed under rule 61. Rule 58 deals with modifications to a flying machine, and the necessity of a certificate after the modifications have been carried out. Rule 60 deals with daily inspections of the flying machines by qualified A.M.Es. Rule 61 deals with licensing of the A.M.Es. Section D of Schedule III at page 104 of the Manual deals with inspection of an aircraft before flight. It requires that the inspection shall be carried out by an A.M.E. The form of the certificate shows that the inspecting A.M.E. is personally responsible that the aircraft and its engine are in every way fit for flight. The completed forms requisitioned by the Engineers' Association and produced by the Corporation show that the A.M.E. has himself to make the check of the various parts of the aircraft and its engine and to sign the various items printed in those forms. It is he who gives the certificate though he is assisted by mechanics. Ex. E-1 to E-4 show that the Corporation holds the A.M.Es. personally responsible for any defect in, or any negligence in attending to aircraft. Sri Muthuswami stated that the statutory duty of an A.M.E. is to check the various parts of an aircraft. Whether or not a mechanic has done the checking, he has to do the checking himself. I doubt whether he is correct when he says that the A.M.E. does not mind whether or not the mechanic has signed the column meant for him in the check forms. The evidence of Sri Mehta that it is the duty of the A.M.Es. to see that the column meant for mechanics is also signed by them carries conviction to my mind, specially in view of the completed check forms produced before the Tribunal. Be that what it may, the fact remains that the A.M.Es. have to do the checking themselves, even though a mechanic may also have done it. They are under a statutory obligation to do so. It is not a mere supervisional work that they do, *viz.*, the mechanics doing the checking and they only supervising them. In fact it is admitted by Mr. Mehta that certain parts of the checking work have to be done by the A.M.Es. themselves. For the convenience of the Tribunal Mr. Mehta has drawn up a list of duties of the A.M.Es. in grades 12 to 15, Ex. E-28 to 30. He admits that in Ex. E-28, items 1, 2, 3 have to be done by the A.M.E. himself. Item 4 is to be done firstly by the mechanic and then the A.M.E. checks it up. In item 5, the checking of the flight report is done by the A.M.E. himself but the rectification of the defects is done by the mechanic and checked by the Inspector. Items 6 and 7 are done firstly by the mechanics and then checked up by the A.M.Es. and so on.

24. In the book entitled "A guide to the Aircraft Maintenance Engineers Licence Examinations" Ex. 31, the following occurs in para. 3 on page 1:—

> "A licence holder's position while so acting, is one of responsibility, as the lives of passengers in aircraft may depend on the quality of his inspection and the integrity of his certification. If, at any time, he fails properly to use the powers that have been given to him, and in accordance with the Indian Aircraft Rules, 1937, his licence may be cancelled or suspended."

Check 1, Ex. E-25 will show that the ground test of engines is to be done by the A.M.E. himself.

25. Taking into consideration the statutory obligation cast upon the A.M.Es. and the documentary and oral evidence as regards the duties

actually performed by them, the position is that the main duty of the A.M.Es. in grades 12 to 15 is to perform work of a technical nature. They perform no work of administrative or supervisory character as engineers in grade 16 or above do. The fact that they are assisted by mechanics in carrying out some of their duties does not render their work as one of supervisory nature. The fact that some times they report against the mechanics cannot take them out of the definition of "workmen". When as regards the technical personnel, there is no limitation of salary in the definition of "workmen", the fact that they are drawing more than Rs. 500 per mensem cannot take them out of that definition. My interpretation of section 2(s) is that such engineers whose main duty is to perform work of technical character fall within the definition of "workman" irrespective of the amount of wages drawn by them, but those higher up who perform work of administrative or supervisory nature do not fall in it. I see no illogicality in this. From the very nature of things, those falling in the first mentioned class of engineers will draw lower wages than those in the second one. I hold that A.M.Es. in grades 12 to 15, both inclusive, are "workmen" as defined in the Act.

26. Sri Bhumitra who is a traffic officer incharge at Nagpur station appeared and represented against his categorisation. The question then arose whether a traffic officer falls within the purview of the reference. Sri Bhumitra examined himself and on behalf of the Corporation Sri H. E. Daruwala, Traffic Manager at Delhi and Sri S. C. Mukerji, Traffic Manager at Bombay were examined. On a consideration of their evidence I have no doubt in my mind that the duties of a traffic officer or station incharge are supervisory in nature. The wage structure as recommended by the Services Committee will show that a traffic officer starts with grade 10 which has the scale of Rs. 250—15—370 and goes upto grade 13 which has a scale of Rs. 550—25—750. Sri Bhumitra is in grade 12 and he admitted that his main duties were:—

"(1) To ensure that the departure of services are in time.

(2) To verify, to prepare and to check documents or alternatively to attend the aircraft in person.

(3) To do the correspondence with the local offices and to maintain records himself.

(4) To ensure preparation of various returns to the headquarters and other prescribed returns."

He admits that about 20 persons are under him at Nagpur station, excluding loaders whose number is about 30. There are about 6 or 7 traffic assistants of grade 5 or 6 and a traffic officer of grade 11 under him. He grants casual leave to the staff at Nagpur and controls them. Sri Daruwala stated that the main duties of a traffic officer are general supervision. He is always provided with adequate staff depending upon the traffic requirements. The staff under him are generally of such category and qualifications which can independently discharge their duties. It is only in the cases of great difficulty that such staff approach him for guidance. The traffic officer is supposed to supervise the work of the entire staff working under him and to see that the public is not inconvenienced. He has to keep liaison with the different Departments of the Government, prepare, check and to submit report on the various policies to the headquarters. Sri S. C. Mukerji who is Traffic Manager of the

Bombay area and under whom is Nagpur station stated that roughly the break up of the station staff at Nagpur is as follows:—

Operation assistants	2
Porters	33
Peons	4
Sweepers	4
Chowkidars	2
Typist	1
Junior Traffic Asstt., grade 4	7
Traffic Assistants, grade 5	6
Traffic Assistants, grade 6	4
Traffic Officer, grade 11	1
Traffic Officer, grade 12	1
Cashier in grade 7	1
Teleprinter operators	5
Drivers in grade 2	3
Senior drivers in grade 3	2
Motor mechanic, grade 4	1
TOTAL:	77

In addition there are 23 men in the engineering staff in charge of one Mr. Pandit. Sri Mukerji added that the duties of grade 12 traffic officer are mainly supervisory and not clerical or manual. I hold that the traffic officers are employed for supervisory work and as such all those who draw wages exceeding Rs. 500 per mensem are not "workmen" and they are beyond the purview of the reference to this Tribunal.

27. The pilots raised the question of non-implementation of the agreement entered into between their Association and the Corporation. Siliguri employees raised the question of place allowance. None of these demands falls within the terms of reference and this Tribunal cannot deal with them. According to section 10(4) of the Industrial Disputes Act, 1947, this Tribunal must confine its adjudication to those points of dispute which have been referred to it.

28. Before dealing with the demands, referred to this Tribunal, certain facts which form background of this dispute may be stated.

29. The Air Transport Industry was nationalised on the 1st August, 1953, when the Air Corporation Act, 1953 (XXVII of 1953) came into force. Prior to that date the industry in this country was in the hands of the following eight companies whose business was taken over by the Corporation and vested in it:—

(1) Air India Limited.
(2) Air Services of India Limited.
(3) Airways (India) Limited.
(4) Bharat Airways Limited.
(5) Deccan Airways Limited.
(6) Himalaya Aviation Limited.

(7) Indian National Airways Limited.

(8) Kalinga Airlines Limited.

30. In Section 20(1) of the Air Corporation Act, 1953, the following provision was made in respect of the officers and employees of the existing Air Companies:—

"Every officer or other employee of an existing air company (except a director, managing agent, manager or any other person entitled to manage the whole or a substantial part of the business and affairs of the company under a special agreement) employed by that company prior to the first day of July, 1952, and still in its employment immediately before the appointed date shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in either of the Corporation by virtue of this Act, become as from the appointed date an officer or other employee, as the case may be, of the Corporation in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the existing air company if its undertaking had not vested in the Corporation and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms of conditions are duly altered by the Corporation :

Provided that nothing contained in this section shall apply to any officer or other employee who has, by notice in writing given to the Corporation concerned prior to such date as may be fixed by the Central Government by notification in the Official Gazette, intimated his intention of not becoming an officer or other employee of the Corporation."

31. The pay-scales and service conditions in the several companies were so different and diverse that it was considered necessary by the Corporation to appoint a Service Committee within a week of its formation. It submitted the report on the 16th July, 1954.

32. It shows that the Committee collected basic data regarding their organisation and the terms and conditions of service of their employees from the Companies taken over by the Corporation and invited employees' unions and associations to send memoranda on the points to which they wished to draw the Committee's attention. On receipt of the information and memoranda, a questionnaire was drawn up and sent to heads of different departments and sections of all the companies and also to the Employees' unions and associations with the intimation that the answers to the questions would also be elicited individually or through representatives in the course of the oral evidence to be recorded by it. It toured the various centres all over the country. The total number of witnesses examined by it was 150. It ascertained the views of a number of government officials from different departments whose knowledge and experience was likely to be useful in the discharge of its task. Some information was also obtained from appropriate sources regarding the practices prevailing in some private industrial enterprises and in a number of public and semi-public enterprises such as Hindustan Aircraft Ltd., Hindustan Ship Yard Ltd., Port Trusts, Delhi Transport Service, Bombay Electric Supply and

Transport Undertaking etc. On or about the 23rd August, 1954, the Corporation forwarded a summary of the report to all the representative associations of workers and their comments were invited. The Air Corporation Employees Union did not favourably receive the recommendations of the Services Committee. It says:—

> "On the publication of the report of the Services Committee there was disappointment throughout the Indian Airlines and the employees protested against the various recommendations of the Committee arbitrarily reached and demanded that the Corporation should discuss the demands with the Union to reach an amicable settlement. All India Protests and Demand Day was observed by the employees on the 24th September, 1954, and the Union urged upon the Government and the Corporation not to implement the report of the Committee and requested joint discussions on the demands."

33. On or about the 30th October, 1954, the Union submitted a charter of demands to the Corporation and the employees threatened to go on strike. The Chairman of the Corporation held discussions with the union in November, 1954. On the 1st December, 1954, the classification of employees in various pay scales together with the revised service conditions were approved by the Corporation at a meeting held on that date and a memorandum determining afresh the remaining terms and conditions of service was notified to each employee and to all their representative bodies on the 11th December, 1954. It is stated by the Corporation that in this it made a departure from the recommendations of the Services Committee with a view to liberalise service conditions to secure an amicable settlement of the dispute. The terms and conditions of service were accordingly altered with effect from the 1st January, 1955, as contemplated by section 20 of the Air Corporation Act. The Union, however, expressed its disagreement with the classifications of employees and service conditions as notified and submitted a list of demands. It is stated by the Corporation that the service conditions and classifications of employees were further liberalised by it at a meeting held in January, 1955. The union was still not satisfied and in March, 1955, it published a pamphlet entitled "Delhi Departures" in which it alleged among other things that the revised terms and conditions of service as enforced were not in accordance with the discussions held earlier. The union requested the Minister for Communication to intervene. A conference was called by the Minister at which the contentions of the union were discussed and a settlement was recorded on the 1st May, 1955 (hereinafter referred to as the "first agreement"). Soon after, however, the union contended that the Corporation was not implementing or wrongly implementing the settlement or withdrawing its benefits. There was unrest and finally a meeting was held between the Corporation and the union in January, 1956, at which the financial circulars issued by the Corporation were discussed with the Chairman. The note clarifying the various points was signed on the 2nd February 1956 (hereinafter referred to as the "second agreement"). The union contends that even after the second agreement the Corporation continued issuing orders which were either contradictory in nature or which nullified the provisions of the second agreement. In September, 1956, at the Annual Conference, the union decided to serve on the Corporation a charter of demands and call upon it to indicate its decision within a specified period. The union suggested to the Corporation to settle the issues either through joint discussions or through arbitration or through adjudication and informed it that if the Corporation persisted in ignoring the union's appeal, the union would resort to strike in support of its

demands embodied in the charter which was served on the Corporation on the 8th October 1956. Accordingly a strike notice was served on the 28th January, 1957 by the union proposing to go on strike from the 15th February, 1957. As a result of the strike notice, conciliation proceedings on the demands of the union started in Delhi, Hyderabad, Madras, Calcutta and Bombay. In Delhi the conciliation was a failure and the dispute was referred to the Additional Industrial Tribunal, but after this reference, the parties agreed to have the proceedings there quashed. In Madras also the conciliation efforts were a failure and the dispute was referred to an Industrial Tribunal. In Calcutta also the conciliation failed and the State Government requested the Central Government on the 28th February, 1957, to refer the dispute for adjudication to the National Tribunal. In Hyderabad, the conciliation proceedings are said to be still pending. The conciliation officer is alleged to be of the opinion that as the dispute is before this Tribunal, the conciliation proceedings in Hyderabad should be deemed to have been closed. The same view has been taken by the Conciliation Officer in Bombay. In Madras the parties have filed a compromise that the dispute be decided in terms of the decision of this Tribunal. In this state of affairs the dispute was referred to this Tribunal in June last.

34. Almost all the demands made by the employees require additional expenditure. The Corporation abides by the two agreements dated the 1st May, 1955 and the 2nd February, 1956 and has no objection to incur the additional cost involved in implementing them. But as regards matters not covered by the agreements, it contends that financially it is not possible for it to undertake any further expenditure. On the other hand, the union contends that financially it is possible for the Corporation to meet their demands. In this connection the following from the written statement of the Corporation may be quoted:—

> "The revised remuneration, terms and conditions as effective from 1st January 1955 resulted in an additional expenditure of Rs. 18·00 lakhs per annum. The financial effect of the further revision, as a result of the discussions mentioned above involved a further additional expenditure of Rs. 17·00 lakhs per annum."

In this connection Ex. 51, a statement showing the pay and allowances of the employees before and after categorization may also be seen. It shows that before categorization, the wage bill per month was Rs. 16,33,218. It rose to Rs. 19,37,918 or by Rs. 3,04,700 per month after categorization. On the other hand the Employees' Union in its written statement says:—

> "The working results of the Corporation is satisfactory and it is not actually running at a loss. The losses so far shown are due to factors other than wage rise or any rise as a result of improved service terms, if any. The financial results available with the union support this contention. The highly paid top management whose number have increased considerably since 1st August 1953 consumes almost 65 per cent. of the total wage bill whereas the bulk of the other employees in lower grades are allotted the remaining percentage. The annual wage bill for the employees coming within the scope of this union has in effect gone down whereas the volume of work has gone up. The wage bill for the employees in this Union category in the 8 ex-Air Companies was much higher than what they are to-day in the Corporation. There would be almost negligible increase in the wage bill if the main demands of the Union like Pay Scales and

Categorisation amongst others are conceded..... The present wage bill for the staff coming within the scope of this Union is Rs. 1·10 crores. The capacity ton miles produced per employee is appreciably high in the Corporation whereas in terms of real wages the earnings have decreased."

35. In compliance with section 37(1) of the Air Corporation Act, 1953, the Corporation submits to the Central Government Annual Report with the Statement of Accounts for every financial year ended 31st March. The Central Government causes every such report to be laid before the Parliament. Under section 15 of the Act, the accounts are subject to audit by the Comptroller and the Auditor General of India. The Corporation has filed the four Annual Reports for August, 1953 to March, 1954, 1954-55, 1955-56 and 1956-57 (Exts. 4 to 6 and Ex. 40). It appears that every year the Corporation suffered loss which was as follows:—

Year	*Loss incurred*
1953-54 ..	.. 79,47,988 (8 months)
1954-55 ..	.. 90,15,332
1955-56 ..	.. 1,19,40,035
1956-57 ..	.. 1,08,78,859
TOTAL	.. 3,97,82,214

36. It is argued on behalf of the employees that the Corporation makes substantial contribution to the revenues of the States and if this is taken into consideration, then actually there is no loss to the State from this nationalised industry. In this connection the following remarks in the Fourth Annual Report of the Corporation, occurring in para. 30 at page 21 are referred to:—

"We contributed substantially to the public revenues during the year under review. The excise duty and sales tax paid by the Corporation on aviation fuel and oil alone came to Rs. 113·26 lakhs as against the loss of Rs. 108·79 lakhs. This does not take into account the customs duty on aircraft spares and aircraft imported from abroad, and duty on petrol used by our Motor Transport vehicles. We also pay a sum of about Rs. 25 lakhs per annum to the Director General of Civil Aviation for the aerodrome and communication facilities provided by him."

37. Section 9 of the Air Corporations Act enjoins upon this Corporation to act on business principles in carrying out its duties. Business principles require that the Corporation should pay the taxes and landing fees etc. just in the same manner as the private ex-airlines companies used to do. To exempt it from the taxes or the fees would in effect amount to subsidizing it. It is, therefore, not proper to ignore the taxes and fees etc. paid by the Corporation in judging its financial position. From Ex. U-338, filed by the employees, it will be seen that every year the Corporation has been receiving loans from the Government. It is thus indebted. The Corporation inherited on nationalization 8 concerns, most of which had been incurring losses from year to year. These losses were as high as about Rs. 110 lakhs in 1949, *vide* para. 34 of the Fourth Annual Report,

Ex. 40. Dealing with the future trends, the Corporation says, in paras. 35 and 36 of the Fourth Annual Report, as follows:—

35. "The position in the immediate future is somewhat uncertain. The introduction of costlier aircraft, such as the Viscounts, is bound to push up the provision for depreciation to a much greater extent. Further, much of the expenditure on the development of new projects is an immediate commitment whereas returns in the form of an increase in traffic will take time to appear. The wage bill of the employees has not yet reached the degree of stability expected as the latest demands are pending for adjudication before the National Tribunal appointed by the Government of India under the Industrial Disputes Act. In the meantime, the excise duty on petrol has been further raised which alone will make a difference of about Rs. 30 lakhs, in the operating expenditure. Some of the States have recently announced a further levy of sales tax. Thus, in the immediate future we shall face a period of greater expenditure, necessitated by our plans for expansion, modernization of the fleet and other factors.

36. "As against the circumstances mentioned above, there are certain favourable trends as well. For example, the break-even load factor is slowly coming down and it is possible that with Viscount operations, it may come down still further. The traffic in India has shown considerable promise in recent years. The load factors on many of our services are high and have in certain cases reached a saturation point. We hope, therefore, that with progressive modernization of our fleet and development of additional traffic, we may, once the initial heavy expenditure on the introduction of new aircraft is off-set by increased revenues, appreciably improve our financial prospects. This process may be accelerated if certain measures which are under consideration for increasing revenues and decreasing expenditure bear fruit. Of these, apart from internal economies, the most important are a revision of mail and passenger rates and rebate of excise duty on aviation spirit which constitutes in our case as domestic operators a very high percentage of the total operating costs."

38. At page 28 of the Fourth Annual Report, the Corporation concludes follows:—

"The operating results disclosed for the first time a position when the losses including depreciation are more than off-set by our contribution to public revenues in the form of excise duty and sales taxes on aviation spirit. This position, however, may not be easy to maintain in the near future on account of the considerably enhanced costs of production as a result of the introduction of costlier aircraft, an increase in the excise duty on aviation spirits and certain other factors. The Viscounts will be progressively introduced on our principal routes from October, 1957 to June, 1958. The Vikings will be retired during the course of the year. The routes operated by the Vikings as well as some of those operated by the Skymasters and Dakotas will be taken over by the Viscounts with a considerably expanded capacity. It is, however, difficult at this stage to visualize the prospective increase in traffic, but even if due allowance is made for the normal rate at which traffic has

grown, it will be some time before the operating results are striking enough to make a substantial difference to the financial position of the Corporation."

39. Sri Buch on behalf of the employees referred to the various remarks in the Estimates Committee Report, Ex. U-76 and contended that the loss was, to a great extent, due to the fact that the Corporation was not effecting economies in various directions where they were possible. This Tribunal is not called upon to pronounce its opinion upon the management of the Corporation. It has been stated on behalf of the Corporation that the Central Government asked for the comments of the Corporation upon the report of the Estimates Committee and the same have been forwarded to the Government which is considering them.

40. Sri Buch referred also to a speech made by the Hon'ble Minister of Communication in the Parliament, Ex. U-94, wherein he defended the management of the Corporation and remarked that nowhere in the world, barring one or two companies in Latin America, any internal air service made any profit and that they had to be subsidised. He added that if the taxes are taken into consideration, then the loss would be much smaller in figure. The employees referred also to para. 262, at page 141 of the report of the Air Transport Enquiry Committee, 1950 which deals with the financial position of the Air Transport Industry in other countries. The broad position appears to be that the Internal Airlines in other countries also have suffered losses and that they had to be borne by the national exchequer. But this fact by itself does not improve the financial position of the Corporation. It may be that in future it may make profit, but the position is not certain. The Corporation which took over business from 8 ex-airlines companies, most of which were running at a loss, had a gigantic task before it. It cannot be said that it has been able to come out of the woods. In the consideration of the demands, the present precarious financial position of the Corporation must be one of the important factors to be kept in view. Of course the undertakings given by it in the two agreements must be honoured, but beyond them the capacity to pay must also weigh.

41. The consideration of the specific demands may now be taken up.

PART I

DEMAND NO. 1—PAY SCALES

42. The demand runs as follows:—

"(a) Whether the following salary grades should be interlinked to read as one grade as under:—

Grade	*Scale of Pay*	*To read as one interlinked grade*
1	50—2—80	..
2	60—3—90	..
3	70—4—122	70—4—98/106—6—172
4	100—6—172	
5	140— 8—220	140—8—188/200—10—300
6	190—10—300	

7	220—12—340	220—12—256/275—15—395/415—15—550
8	260—15—455	
9	340—15—550	
7	220—12—340	220—12—340—15—550 (in cases where grade No. 8 is not applicable.)
9	340—15—550	
10	250—15—270	250—15—310/335—15—440
11	320—15—440	(Grade 10 and 11 to be interlinked with Grade 12 in the same manner as applicable to other classes of staff)".

(b) Whether movement within the interlinked salary grade should be automatic on reaching a particular point in the interlinked grade. For example, in the interlinked grades 3 and 4, 5 and 6, 7 and 9 any employees on reaching 98, 188 and 340 would be brought to the next salary stage at 106, 200 and 340 in the respective interlinked grades?

(c) Whether movement from one interlinked grade to another interlinked grade should be subject to the efficiency and vacancy in the next higher grade upto the grade 9 and whether consequently the vacancy in the interlinked grade should be filled in from among the employees already working in the Corporation?

(d) Whether, heads of employees in salary grade No. 1 should be placed in salary grade No. 2 at an appropriate stage in that grade?

(e) Whether, employee in salary grade No. 1 and salary grade No. 2 not otherwise upgraded should be placed in the next higher grade subject to their passing a trade test?"

In the first agreement, the provision in regard to pay scales is as follows:—

"(a) Salary grades will be interlinked as under:—

Grade No. 1	50—2—80	
,, ,, 2	60—3—90	
,, ,, (3	70—4—122)	
,, ,, (4	100—6—172)	
,, ,, (5	140—8—220)	
,, ,, (6	190—10—300)	
,, ,, (7.	220—12—340)	
,, ,, (9	340—15—550)	(Selection Grade)
,, ,, (7	220—12—340)	
,, ,, (8	260—15—450)	For CHARGE HANDS ONLY
,, ,, (9	340—15—550)	Selection Grade.
,, ,, (10	250—15—370)	FOR AIR HOSTESSES ONLY
,, ,, (11	320—15—440)	

(b) Movement within a bracket will be automatic on reaching a particular point to the next link in the scale subject to efficiency.

(c) Movement *from one bracket to another, upto grade* 9 WILL BE SUBJECT TO efficiency and vacancy in the next grade.

(d) On categorisation, an employee will be given the benefit of the number of completed years of service he has previously rendered in discharging duties and responsibilities more or less equal to or in corresponding to those of the new post or grade in which he is placed.

(e) Heads of employees in grade 1 will be categorised in Grade 2.

(f) Anomalies arising out of categorisation will be rectified on receipt of individual representation made to the Corporation and the Union will assist the employees in processing their representations.

(g) Employees in grades 1 and 2 not otherwise upgraded will be placed in the next higher grade, subject to their passing a trade test."

In the second agreement, the only provision is in item No. 17 which reads as follows:—

"Interlinking of grades as embodied in the agreement was discussed for expeditious implementation."

43. The demand as now put forward differs from the agreement in the following respects:—

(1) The first agreement only stated that the "salary grades will be interlinked as under." The demand, however, is that the interlinked grades should be read as one grade.

(2) The first agreement laid down that "movement within a bracket will be automatic on reaching a particular point to the next link in the scale, *subject to efficiency*". In the demand, however, the efficiency bar is sought to be done away with.

(3) It will be seen from the first agreement that promotion from grade 7 to 9 is not automatic. Grade 9 is a selection grade. The demand, however, is that movement from grade 7 to 9 should be automatic in cases where grade 8 is not applicable.

(4) The first agreement will show that interlinking of grades 7 and 8 was applicable only to the Chargehands. Further grade 9 was a selection grade and movement from grade 8 to 9 was not automatic. The demand, however, is that grades 7 and 8 should be interlinked for all employees, irrespective of the fact whether they are Chargehands or not. It does away with the condition that grade 9 is a selection grade.

(5) According to the first agreement, grades 10 and 11 were interlinked for Air Hostesses only. The demand, however, is to interlink these two grades for all employees.

(6) The first agreement does not mention the interlinking of grades 10 and 11 with grade 12. In the demand, however, these three grades are sought to be interlinked.

(7) The first agreement provides that movement from one bracket to another upto grade 9 will be subject to efficiency and vacancy in the next interlinked grade. While this is accepted in the demand, a new demand is put forward to the effect that

vacancy in the interlinked grade should be filled in only from among the employees already working in the Corporation. This means that the liberty of the Corporation to make recruitments from outside when necessary in the interest of work, is sought to be taken away.

44. On the 1st August, 1953 the Corporation came into existence. On the 7th August, 1953, it passed a resolution setting up the Services Committee with the terms of reference as mentioned in para. 8 above. On the 16th July, 1954, the Services Committee submitted its report to the Corporation. The employees, however, agitated against the pay scales recommended by that Committee. Then there was the agreement dated the 1st May, 1955. On the 2nd February, 1956, there was the second agreement in which, so far as the pay scales were concerned, there was no fresh demand. Only the expeditious implementation of the interlinking of grades as embodied in the first agreement was stressed. In October, 1956, the employees submitted a charter of demands in which they made the claims that are now being put forward in this demand. It is true that in industrial disputes, an agreement or settlement arrived at is not binding for all times to come. Nevertheless sanctity must be attached to the agreement arrived at between the parties, and it should not be departed from so soon thereafter, unless there are strong grounds for doing so. Frequent modificaions of the agreement are likely to deter the parties from entering into it. An agreement is entered into in the interests of industrial harmony and if it is modified so soon thereafter, it is likely to defeat its very purpose. As already shown the financial position of the Corporation is not good. A demand which has the effect of casting recurring additional liability upon the Corporation, can be allowed only when there are pressing grounds for the same. The pay-scales and the interlinking of grades show that the employees' emoluments and prospects compare favourably with these prevailing in many business concerns, though they may not be so as compared with a few business concerns running on profits. The Corporation has stated that when its financial position improves and stabilizes, it will consider the demand of the employees. I hold that having regard to all the circumstances stated above, the pay-scales as fixed by the first agreement should not be departed from at present, and the additional demands made under this head should not be allowed. This disposes off clause (a) of the first demand.

45. The employees contend also that there has been non-implementation or wrong implementation of the two agreements or withdrawal of the benefits covered by them in the following respects, so far as this demand is concerned:—

(1) As regards movement within the inter-linked grades, the provision in the first agreement is that it will be automatic on reaching on particular point to the next link in the scale subject to efficiency. Sri Buch on behalf of the employees stated that he had no objection to the efficiency of the worker being judged at the relevant stage, but in actual practice very few men were allowed to cross the efficiency bar and in this connection he referred to Ex. U-36 in which illustrations of a number of persons who were stopped at efficiency bar are given. He pointed out that very few men in grade 3 have been allowed to go to grade 4 on reaching the stage of Rs. 98. He wanted that while considering efficiency of an employee, his record may be examined and if there is nothing against him in the records, he should be allowed to go to the higher interlinked grade. But if there was anything against him, then the reasons for which he was being stopped at the efficiency bar

should be communicated to him so that he might represent to the authorities for his promotion. Sri Vimadlal on behalf of the Corporation, referred to rule 21 of the General Employees' Service Rules, the Flying Crew Service Rules and the Aircraft Engineering Department Service Rules which require that when an employee reaches the efficiency bar stage, he will be allowed to go to the higher interlinked grade on the grant of a certificate by the competent authority in the prescribed form. Rules 15 and 16 of the Recruitment and Promotion Rules, Ex. 19, were also referred to. Rule 15 is about the certificate, as in rule 21. Rule 16 runs as follows:—

> "When the certificate as required in rule 15 is withheld, reasons for the same shall be recorded and communicated to the employee concerned who shall have an opportunity to make representation in the same manner as if a punishment had been awarded within the meaning of 'Instrument of Delegation of certain Powers and Functions of I.A.C.' referred to above and the relevant Service Rules."

The rules framed by the Corporation thus already give opportunity to the employees to make representation if they are stopped at the efficiency bar. Sri Vimadlal asserted that not more than 8 persons have been stopped at the efficiency bar stage. Sri Buch, however, said that the number was much larger. It was complained on behalf of the employees that there was delay on the part of the prescribed authority to grant certificate. Sri Vimadlal on behalf of the Corporation agreed that if within two months of the accrual of the increment at the stage of the efficiency bar, no certificate was granted by the prescribed authority or no definite order for withholding promotion at the efficiency bar stage was passed, then the employee concerned shall be deemed to have crossed the efficiency bar and to have earned the increment. This is a reasonable offer and should satisfy the employees. I direct accordingly. The employees also wanted the application of the five principles laid down by the Appellate Tribunal in para. 177 of the award in the Bank Disputes case. Those principles were evolved having regard to the peculiar wage structure in banks and the nature of the industry dealt with by the Appellate Tribunal. Only the following three of them are desirable in this case:—

> "(c) The circumstances necessitating the proposed imposition of the bar shall be communicated to the employee, and the employee shall be given an opportunity to submit an explanation which shall be duly considered.
>
> (d) An efficiency bar once imposed shall be reviewed every year, and before it is continued the employee shall be given an opportunity to make such representation as he desires. Reasons for continuation of the bar shall be recorded.
>
> (e) If the workman held up at the efficiency bar improves, he may be allowed to cross the bar and at the discretion of the management may even be placed at such stage in the running time scale as he would have attained if he had not been held up. In such case the workman shall not be entitled to claim any arrears on the basis as if there had been no bar."

Clause (c) is already provided in rule (16) of the Recruitment and Promotion Rules. Clauses (d) and (e) as quoted above are reasonable and I direct accordingly. In this connection it may be mentioned that the Corporation has sanctioned standard force for the headquarters and

the three areas of Bombay, Calcutta and Delhi. There should be one sanctioned strength for interlinked grades and not different strength for different grades interlinked with each other. The Corporation appears to have kept this principle in view, *vide* Exts. 21/1 to 21/4. But if there has been non-observance of this principle in the case of any interlinked grades, the Corporation should revise the standard force with due regard to the above principle.

The first agreement will show that grade 9 is a selection grade. The direction which has been given above for crossing efficiency bar will not apply for promotion to selection grade. There, the principle of rigorous selection on merit will be applicable. Further it will be noted from the same agreement that grades 10 and 11 were interlinked for Air Hostesses only. It should not be deemed therefore, that this interlinking is for all employees in grade 10. Of course so far as engineers are concerned, grades 10 to 12 are interlinked as would appear from Ex. 25 which is the note of the discussions incorporating the agreement reached between the Hon'ble Minister of Communication and the Chairman of the I.A.C. and the representatives of the Engineers' Association on the 5th May, 1955. In this connection interlinking as recommended by the Services Committee at pages 91, 94, 97, 98, 105 and last but one paragraph at page 13 of the report may also be seen. Lastly it will be seen from the first agreement that grades 7 to 9 were interlinked for chargehands only. Every one in grade 7 is not entitled as of right to the benefit of this interlinking. This disposes off clause (b) of this demand.

(2) As regards clause (c) of this demand, Sri Buch stated that para. 12 of the minutes of the meeting of the Liaison Committee held at Madras on the 13th December, 1955 be followed and in this connection he referred also to page 10 of the resolution of the 3rd meeting of the Labour Relations Committee, held at Hyderabad on the 26th and 27th October, 1956 (Exts. U-206 and U-207). The resolution passed at Madras is as follows:—

> "*Filling up vacancies and recruitments.*—The Area Manager agreed that the policy in this regard should be to first advertise and display on notice boards the vacant positions for which applications would be entertained. He agreed with the L.C. that the vacancies would be filled in the following order subject to all things being equal. The Area Manager agreed (1) the existing employees in the lower cadre would be given the first preference, (2) the retrenched or ex-employees would be given the second preference, (3) only after that the outsiders would be recruited, be it casual, temporary or permanent post. The L.C. brought it to the notice of the A.M. that the last two recruitments made at Madras in the Engineering Department failed to follow this procedure which point the A.M. assured would be enquired into and asked the Chief Pilot in future to ensure that the outlined procedure is followed by the Personnel section."

The Labour Relations Committee at Hyderabad passed the following resolution at page 10:—

> "Resolved that the agreements entered into with the unions and associations by the Corporation be studied by the concerned officers and implemented in the spirit in which they were arrived at, which would avoid unnecessary references and clarifications; also that the decisions arrived at between the unions and associations and the Corporation at meetings and

recorded in written minutes be honoured and expeditiously implemented by departmental heads and area authorities."

It may be mentioned here that the Labour Relations Committee was formed under section 41(2) of the Air Corporations Act, 1953. Sri Buch referred also to the schedule in the I.A.C. Recruitment and Promotion Rules, Ex. 19 and stated that the method of appointment in grades 1 to 6 is mostly by direct recruitment and that no percentage is allowed for promotion from the lower grades. Sri Vimadlal stated that as the nature of jobs was different, so the method of appointment was laid down as "direct recruitment". Sri Buch conceded to the right of the Corporation to make direct recruitment in various grades, but only to the extent provided in para. 12 of the minutes of the proceedings of the meeting of the Liaison Committee held at Madras on 13th December, 1955. At the hearing of the case on the 15th November, 1957, Sri Vimadlal stated that while the Corporation would have a right of outside recruitment where necessary, other things being equal, suitable existing employees would be given preference so far as possible within the Recruitment and Promotion Rules. I am of opinion that the principles laid down in para. 12 of the minutes of the proceedings of the Liaison Committee, referred to above, for filling up vacancies are just and fair. They did not rule out outside recruitment when necessary. The words 'all things being equal' in that resolution take into account the qualifications of the candidates. I direct accordingly. This disposes off clause (c) of this demand.

(3) Coming to clause (d) of this demand, the complaint of the employees is that persons from whom actually work is being taken as heads of employees of grade 1 are being denied grade 2, to which they are entitled according to para. 1(e) of the first agreement. Sri Buch referred to the union's letter dated the 13th February, 1957, addressed to the Area Manager, Calcutta and the letter dated the 13th June, 1956, addressed to the Assistant Personnel Manager, Bombay, asking for the promotion of head loaders to grade 2. Sri Vimadlal on behalf of the Corporation stated that if the union proves any genuine case of non-implementation of the two agreement, the Corporation would rectify it. The union produced letter dated the 8/11th February, 1957 from the Corporation wherein it was admitted that 6 loaders working as head loaders had been denied grade 2. The Personnel Officer expressed his inability in that letter to give them grade 2 on the ground that according to the standard force of the area they could not be upgraded to grade 2. On 14th November, 1957, Sri Rajindra Singh, Chief Personnel Officer, admitted in this Tribunal that he had ordered three of these to be promoted to grade 2 with effect from 1st January, 1955. As regards the remaining three, he stated that they had been working as Shift-in-charge for the last six months and they would be paid salary in the scale of grade 2 for this period. The Corporation is thinking to abolish these three posts of head loaders and to entrust their work to traffic assistants. Sri Vimadlal pointed out to Appendix I of the General Employees Service Rules, Ex. 7, to show that heads of employees of grade 1 were mentioned there as in grade 2. The union complained, that the rule is merely on paper and actually employees who are doing work of grade 2 are being denied that grade. It appears that the Corporation has fixed the sanctioned strength of the various grades and no promotion to grade 2 is given to an employee of grade 1 even though he may have been called upon to do the work of a head. That is an incorrect position and a breach of clause 1(e) of the first agreement. The sanctioned strength of the

establishment has been fixed by the Corporation. The employees may have been consulted, but they had no final say in the matter. The wages of an employee should depend upon the nature of the work performed by him, and not upon the sanctioned strength of the establishment, provided he was called upon by the Corporation or by its competent officer to perform that work. There can be such a thing as an 'ex-cadre' post. At the suggestion of the Tribunal, Sri Vimadlal on behalf of the Corporation agreed that if within the sanctioned strength in grade 2 in regard to the heads of employees of grade 1, a grade 1 employee worked as a head, then he should be paid the scale of grade 2, but if he worked ex cadre as head of a group of employees of grade 1, then he would be paid grade 2 salary, if the ex cadre post is sanctioned by the Corporation, otherwise not. Sri Buch, however, contended that according to agreement, the Corporation should have placed all heads of grade 1 employees working as on 1st January, 1955 in grade 2 and complained that the Corporation had not done it. The Tribunal asked him that now that the strength of various categories of employees had been fixed by the Corporation, did he mean to say that even if a person worked as head of a group of grade 1 employees of the sanctioned strength, he could draw the salary of higher grade without any specific authority from the Corporation. He answered that if an employee had been asked verbally or otherwise by the Corporation or by the competent officer on its behalf to carry out the duties of head of employees in grade 1, he should be given wages of grade 2 whether or not it is in the sanctioned strength. The position thus boils down to this that irrespective of the sanctioned strength fixed by the Corporation for the heads of employees of grade 1, if an employee is called upon to perform the duty of the head of employees in grade 1 by the Corporation or by its competent officer, then he should be placed in grade 2 at the appropriate stage. I direct accordingly. This disposes off clause (d) of this demand.

(4) As regards clause (e) of this demand, Sri Vimadlal at the hearing of the case on the 15th November, 1957, withdrew the contention of the Corporation that according to the agreement the trade test was applicable only up to the stage of categorisation. He offered on behalf of the Corporation to give effect to the trade test clause in the following manner:—

(1) that qualified persons alone should be appointed to the higher grade if there is a vacancy; and

(2) that persons passing trade test should be efficient and otherwise possess requisite educational qualification and should be fit, in the opinion of the Corporation, to discharge the duties of the post to which they aspire.

The union's complaint is that opportunities are not afforded by the Corporation to the employees in grades 1 and 2 to appear for the trade test and to pass it and in this way it has not implemented clause 1(g) of the first agreement. It files a list of men in Ex. U-240 who were denied opportunity of trade test. With the offer which Sri Vimadlal has now made on behalf of the Corporation, this complaint should disappear. It must be made clear, however, that it is implicit in the agreement that the Corporation should make arrangements to enable the employees in grades 1 and 2 to pass the trade test and thus to improve their prospects. In the terms of reference of the Central Wage Board for Sugar Industry appointed by the Central Government on the 26th

December, 1957, the Board has been asked that in evolving a wage structure it should, in addition to the consideration relating to fair wages, also take into account the need for adjusting wage differentials in such a manner as to provide incentives to workers for advancing their skill. It is now a well established principle that workers should be given an opportunity to improve their prospects by advancing their skill. The workers in grades 1 and 2 are low paid and if they are not given this opportunity to advance their skill, there is likely to be frustration among them. It was to avoid such frustration that the provision was made in the first agreement as in clause (g) of para. 1. Hence within three months from the date of the enforcement of this award, the Corporation should evolve a scheme in consultation with the Employees' Union for the periodic trade tests of employees in grades 1 and 2 who desire to appear in such tests. Mere passing in the test should, however, not give the employee a right to appointment in the post for which he has qualified himself. It must naturally depend upon the vacancies in the trade. The Corporation should, however, give preference to its employees who have passed the trade test when vacancies occur and appointments are made. Disregard of the claims of the existing employees who have passed the trade test should give them a right of appeal to the competent authorities against the recruitment of outsiders. This disposes off clause (e) of this demand.

DEMAND NO. IX—CATEGORISATION

46. This demand runs as follows:—

"Whether the following demands in respect of categorisation are reasonable:—

(a) Anomalies arising out of improper categorisation *i.e.* fitting the existing employees in the new pay scales should be rectified in terms of appeals submitted by the aggrieved employees. Appeals regarding categorisation submitted by individual employees in respect of which the Air Corporation Employees Union has submitted a general memorandum should not be disposed off *ex-parte*. Such appeals should be the subject matter of defence by the employees concerned, either by themselves or through the Union as the case may be and of contest by the Corporation so as to enable the respective parties to prove their cases. The procedure to be adopted for the disposal of such appeals should not be decided by the Corporation *ex-parte*. The principles on which the original categorisation of the employees was done including the principles on which the anomalies arising out of improper categorisation were rectified should be scrutinised, while disposing of individual appeals, in the light of general memorandum submitted by the Union.

(b) On categorisation, an employee should be given the benefit of the number of completed years of service he has previously rendered in discharging duties and responsibilities more or less equal to or corresponding to those of the new post or grade in which he is placed. After salaries are adjusted in the new pay scales, no employee will be staggered and he will continue to get future annual

increments in the graded scale, or in the interlinked grade as the case may be.

(c) The circumstance that an employee has appealed for proper categorisation referred to in (a) above shall not in any way affect his right to have his basic pay adjusted in accordance with the rules or procedure specified for the interlinked grade in issue No. I.

(d) Promotions should be effected after categorisation is finalised and thereafter regions-wise definite standard force or establishment strength determined. The circumstances that appointments have been made in higher grades already should not affect the rights of existing employees for promotions in the higher grades.

(e) The pay that an employee was drawing prior to the introduction of new scales of pay should not be reduced while bringing the new scales into force. An employee should not undergo a wage cut as a result of the differences between his old and new total emoluments including personal pay wherever applicable and wage cut in cases, if any, effected should be restored.

47. Before dealing with this demand in details, the following from the Services Committee Report (paras. 75 to 88) may be quoted:—

"75. This problem would have presented little difficulty if the departmental personnel of the different companies had been organised on the same or similar patterns. As it happens, except for flying operations there were wide variations in the duties and responsibilities as well as in the designations of the posts; nor were the salaries paid by the different companies for posts carrying more or less equal duties and responsibilities always comparable.

76. In our wage structure pay scales are linked to the grades of posts. It is the grade that will determine the pay and not *vice versa*. The problem of fitting in the existing employees into the new pay scales, becomes one of fitting them into the new grades. This can only be done after the Corporation have finalised their grade classification pattern in the light of our recommendations and laid down the requirements of each grade and post.

77. We emphatically recommended that the assignment of an existing employee to one or other of the new grades should depend primarily on his qualifications, experience, and his fitness for discharging the duties and responsibilities involved. Other factors, such as, age, previous designation, previous salary, etc. even if taken into account at all can have only minor significance.

78. In the case of each existing employee it will, therefore, be necessary:—

(a) to take stock of professional, technical and other qualifications, and the nature and extent of experience (evaluated in terms of actual duties and responsibilities discharged in the posts previously held irrespective of their designations);

(b) on the basis of such data, and in the light of the requirements of the new posts, to determine the post or grade in the Corporation's new organisation for which he is best fitted; and

(c) to offer him an appointment to such post or grade.

79. The employee who accepts such an offer should automatically come on to the pay scale appropriate to that grade and post. It will then remain only to decide his point of entry into that scale. We think it will be only fair to give to each employee the benefit of the number of completed years of service he has previously rendered in discharging duties and responsibilities more or less equal to or corresponding to those of the new post or grade to which he is appointed. He should thus be deemed to have held that post or grade for that period and should, therefore, be entitled to the corresponding number of increments above the minimum of the appropriate time scale.

80. This method of integrating personnel into the Corporation's service would, in our view, be in the interests of both the Corporation and the employees. We recognise, however, that for some of the employees the new pay plus corresponding dearness allowance would yield total emoluments significantly higher or lower than those previously enjoyed.

81. If the new pay plus dearness allowance are higher, we see no reason to debar the employee from enjoying the benefit which is admittedly related to his fitness.

82. If, however, the new total emoluments are significantly less than those previously enjoyed, a question of policy will arise, the answer to which depends upon how great the difference is. If the drop in emoluments is not greater than the difference between the point of entry into the new grade scale and its maximum, there may be a case for "softening the blow" by permitting the employee to draw the whole or part of the difference between the old and the new total emoluments as "personal pay" to be absorbed in future increments whether in the same grade or on promotion to higher grades. Whether, and to what extent, such a concession should be given will depend upon the Corporation's economic circumstances. We can only recommend in general terms that, unless the cost is totally prohibitive, the blow should be softened for all employees whose new basic pay does not exceed Rs. 250 per month. The Corporation should also endeavour to work out a suitable formula for giving such protection as may be possible to employees whose new basic pay lies between Rs. 250 and Rs. 550. It does not appear to be necessary or economically possible to extend any concession in this respect to other employees.

83. If the drop in emoluments is so great that even the suggested concession makes no material difference, the Corporation must regretfully leave to the employee the choice either of accepting the terms offered to him or seeking employment elsewhere.

84. At this stage reference must be made to some questions likely to arise in applying the concession referred to in para. 82.

(i) The employees of Airways (India) Ltd. had claimed that the annual bonus which they received in some years should be regarded as part of the regular conditions of service and that the Corporation was liable to pay them such a bonus for the year 1953. On a separate reference, we have already advised the Corporation that the employees' contention could not be accepted and that they had no valid claim against the Corporation for grant of such a bonus. A claim may again be made that where the new emoluments are less than the old, the bonus may be calculated as part of the old emoluments for computing the drop in pay in applying the concession referred to in para. 82. Since the bonus could not be claimed by the employees as of right, and was only payable at the company's discretion and if profits permitted, we cannot see why it should be taken into account at all, in assessing how much the employee has lost by coming on to the new scale.

(ii) The employees of Air India may contend that the increments admissible to them which were, for financial reasons, withheld by the company since October, 1949 should be counted as part of the old emoluments in applying the concession recommended in para. 82. Here again, our answer would be in the negative. The essence of the concession is to soften the blow caused by the drop in the actual emoluments. It has obviously nothing to do with what the employee might have got had the company been prosperous enough to sanction all increments due. Such withheld increments need not, therefore, be taken into account except to the extent indicated in the next para.

(iii) A question may also arise as to the date with reference to which the "old emoluments" should be computed. Shortly before nationalization, some companies had granted to their employees promotions or increases in pay which other employees and the Employees' Union generally have characterised as unwarranted. It is unnecessary to examine the validity of this contention, since it seems to us, in any case, to be fair that the 1st April, 1952 [a convenient date before the Government's intention to nationalize commercial (scheduled) air transport became known], is adopted as the basic date for the computation of old emoluments for applying the concession referred to in para 82. Each employee's old emoluments may be calculated, as what he actually received on the 1st April, 1952, plus the increments which would have been admissible between 1st April, 1952 and the 1st August, 1953, in accordance with the pay scale applicable to him on the 1st April, 1952.

85. The preceding paragraphs set out the principles, which, in our opinion, should be followed for bringing existing personnel on the approved new scales. We take it that we are also called upon to suggest a suitable machinery for applying these principles to individual cases. We have elsewhere pointed out

that group judgement is superior to individual judgement in the assessment of posts and persons. It follows, therefore, that the machinery would have to consist of one or more committees.

86. It would be useful to re-emphasise here what we have stated in paragraphs 77 and 78. The process of assessment, selection and integration involves two distinct stages, namely:—

(i) The assessment of the existing employees with a view to decide their fitness for one or other of the new grades or posts in the integrated organisation, and

(ii) the selection for each new post and grade from amongst those who are considered fit for it.

For the lower or middle grades the selection will be easier because the number of posts in each grade will be large. For the higher levels of the integrated organisation, however, the selection will be more difficult because the number of posts diminishes more rapidly than the number of available fit persons. At the highest level in each department of the new organisation there will only be one post to be filled by one of possibly many claimants. In these cases, inevitably, the process of assessment and selection would be more or less simultaneous. If, in the case of a particular new post, the Corporation find that there is no one among the existing employees who satisfies the full requirements, they must regard themselves free to recruit from outside or to leave the post unfilled till one of the existing employees is thoroughly trained for the post.

We have no doubt that down to a certain level, the process of assessment as well as selection must be carried out by the members of the Corporation themselves or by a strong sub-committee of such members. For assessment of the existing personnel at the middle and lower levels it would be more convenient to have one or more committees, organised on departmental basis. These committees may conveniently be referred to as 'Integration Committees' the phrase including the Corporation themselves while carrying out the assessment/ selection of higher level officers.

The employees at all levels in all the centres we visited, made it clear to us that their chief anxiety was that the objectivity and impartiality of their assessment should be ensured and that no room should be left for the operation of conscious or unconscious bias, or old company loyalties. This anxiety is natural and reasonable in the circumstances, and, in the interest of the peace and stability of the undertaking, we would strongly urge that the Corporation should take positive steps to allay it. The best way of doing this would be to associate with the Integration Committees one or two eminent outsiders, preferably with judicial experience, who command the respect and confidence of the employees.

* * * * *

87. When the Corporation have reached their final decisions on our recommendations regarding the grade classification and wage structure, they should be announced, making it clear that no employee will have a claim to be appointed to any of the new

posts merely because he happened to hold in one of the companies a post carrying the same or a similar designation. Every employee should be called upon to submit to the Corporation a full statement giving the details of his qualifications, and experience together with a description of posts held by him under the companies and the duties and responsibilities attached thereto. It should be made clear that any employee who makes false claims in this context would disqualify himself for absorption in the Corporation's service. The Integration Committee or Committees would then consider the detailed information so furnished, verify it with reference to data available from the companies' records or other sources and proceed to assess the employee's fitness for absorption in one or other of the new grades.

88. To summarise, the successive stages will be as follows:—

"(1) Final organisation and wage structure to be determined by the Corporation and announced.

(2) Declaration of qualifications, experience, claims, etc. to be invited from all existing employees.

(3) Corporation to assess fitness of existing higher grade employees for absorption into new higher grades (*e.g.* heads of departments, deputy heads of departments) and appoint the selected candidates to such posts.

(4) Integration Committees for different departments and grades, including in them the newly appointed heads of departments, to assess fitness of lower and middle grade personnel for absorption into new grades.

(5) Determination of point of entry of each employee into the appropriate grade pay/scale.

(6) Where the new total emoluments are less than the old, the decision whether the whole or part of the difference should be allowed as personal pay to be absorbed in future.

(7) Terms to be offered to all employees and appointments finalised."

48. In accordance with the recommendations of the Services Committee, a Committee, consisting of Sri W. R. Puranik, retired judge of the Nagpur High Court and Member of the Union Public Service Commission and Sri L. C. Jain, I.C.S., an outsider connected with the Civil Aviation, was constituted to assess the merits of the existing personnel and to bring them into the new scales from grade 10 and above. A number of departmental sub-committees, composed of senior officials from the Corporation, as detailed in Ex. 12 were also set up to assist the Integration Committee in the categorisation of employees from grades 1 to 9. The existing employees were asked to submit the details of their qualifications and experience. The cases of all employees were examined on the basis of the particulars furnished by them and cross-checked as far as possible with the records of the Corporation. The sub-committees' reports were submitted to the Integration Committee which finalized their proposals. The classifications of employees in the various pay scales together with the revised service conditions were approved by the

Corporation in its meeting held on the 1st December, 1954 and a memorandum determining fresh remuneration, terms and conditions of service, etc. was notified to each employee and to all the representative bodies on the 11th December, 1954. The union was, however, dissatisfied with the classifications of the employees. According to the points that were raised during the course of the negotiations, the Hon'ble Minister of Communication was able to bring about a settlement on disputed points on the 1st May, 1955. The relevant portions of this agreement are as follows:—

"(d) On categorisation, an employee will be given the benefit of the number of completed years of service he has previously rendered in discharging duties and responsibilities more or less equal to or corresponding to those of the new post or grade in which he is placed.

(e) Heads of employees in grade 1 will be categorised in grade 2.

(f) Anomalies arising out of categorisation will be rectified on receipt of individual representations made to the Corporation and the union will assist the employees in processing their representations.

(g) Employees in grades 1 and 2, not otherwise upgraded, will be placed in the next higher grade, subject to their passing a trade test.

Personal Pay

(a) Steps will be taken to mitigate hardships arising out of the grant of personal pay in the maximum number of cases by removing the same.

(b) In the event of an employee having personal pay, the same will be absorbed in his basic pay at the end of three years when he would also become entitled to secondary increment in accordance with the rules governing secondary increment, incremental rate being at the rate of the increment in the scale."

By the memorandum, dated the 16th May, 1955, the Corporation invited appeals from the employees to be submitted within one month for the rectification of anomalies, if any. At the instance of the union, the date of appeal was extended till the end of June, 1955. The Corporation says that a large number of appeals were received and were duly considered by the categorisation sub-committees. Practically in all these cases, the composition of sub-committees was different from one which dealt with the original categorisation. The results of the appeals were duly communicated to the employees concerned. At the time of the second agreement, the union again pressed the issue of rectifying the anomalies on the appeals made by the employees and it was agreed:—

"(1) That a notice embodying the general principles on which representations have been decided would be made available to the employees concerned.

(2) That an employee who is genuinely aggrieved as a result of the decision of the Committee set up for the consideration of the appeals be given an opportunity to ask for a reconsideration of the case in writing by the Committees.

(3) That the Union can assist the employees in processing their representations.

(4) That the Union will prepare a general memoranda for the information and consideration of the Committees on the subject of the disposal of appeals of categories of employees.

It was also agreed to dispose of these representations without further avoidable delay."

49. In accordance with the agreement, notices dated the 2nd April, 1956, embodying the general principles (Exts. 16 and 17), on which representations had been decided, were served on the employees concerned. Employees who were genuinely aggrieved as a result of the decision of the Committee were given an opportunity for reconsideration of their cases by the Committee. These appeals were considered by the respective committees and the results thereof were communicated to the employees concerned. The employees prepared a memorandum dated the 11th July, 1956 for the information and consideration of the Committee on the subject of disposal of appeals. The Corporation says that the said memorandum was duly considered by the Committees. It further says:—

"It will be clear that the Corporation has done its utmost to give satisfaction to the employees in the matter of categorisation. Recommendations of the Services Committee in this matter have been followed and the subsequent agreements with the union respected. The result has been as fair an assessment of the employees' qualifications, experience, etc., as was possible under the circumstances and a just fitting in of the employees in their respective grades. It is inevitable in matters of this nature that there would be some employees who would feel dissatisfied as irrespective of their qualifications, they always desire an upward classification. The Corporation submits that the classification has been done fairly."

50. At the hearing of this case on the 16th November, 1957, Sri Buch stated on behalf of the employees that the union did not want to lay down new principles. It would be satisfied if the principles laid down by the Corporation had been correctly and uniformly applied. The union's grievance is that the Corporation did not apply correctly the principles which it had laid down for itself. He says that a large number of anomalies have occurred. If these anomalies are rectified, Sri Buch stated, the union would be satisfied.

51. The Employees' Union filed Ex. U-241 containing illustrations of some of the anomalies. After these instances had been discussed in detail, Sri Vimadlal undertook on behalf of the Corporation at the hearing on the 20th November, 1957 to re-examine the appeals of all the grade 1 employees with a view to give them the benefit of completed years of previous continued service in the integrated airlines companies where it had not already been done. This undertaking must be honoured within three months from the date of the commencement of this award.

52. In compliance with para. 39 of the Services Committee Report, the Corporation gives place allowance at certain stations. Item No. 4 in the first agreement allows place allowance at certain stations. The service rules made by the Corporation carried it out. It appears that in fixing the emoluments of the employees of the old airlines companies, the Corporation took into account the place allowance which it has fixed. The

Tribunal pointed out to the Corporation that place allowance was peculiar to certain stations and was a variable factor and should not have been taken into consideration along with the permanent factors, like basic wages, dearness allowance etc. Upon this Sri Vimadlal on behalf of the Corporation gave the following undertaking:—

> "To the extent that originally on categorisation, that is, on 1st January 1955 place allowance or part of it was given to equate the employees' total emoluments at that time with his total emoluments on 31st December 1954, the Corporation agrees that the same will be made up by personal pay in case of transfer to a station where there is either no place allowance or less place allowance. This will have no effect on normal increments in either place, and if the employee is promoted to a higher grade or is re-transferred, this shall cease to have effect."

The following illustration was given to explain the above formula:—

Emoluments on 31-12-1954.		*Emoluments on* 1-1-1955.	
Basic pay	Rs. 120	Basic pay	Rs. 109
Dearness allowance	Rs. 30	Dearness allowance	Rs. 25
		Place allowance	Rs. 16
Total:	Rs. 150	Total:	Rs. 150

If the employee is transferred to Madras, he will get:—

Basic pay	Rs. 109
Dearness allowance	Rs. 25
Place allowance	Rs. 5
Personal pay	Rs. 11
Total:	Rs. 150

If this employee goes to Cochin, where there is no place allowance, his pay will be fixed as follows:—

Basic pay	Rs. 109
Dearness allowance	Rs. 25
Place allowance	Rs. Nil.
Personal pay	Rs. 16
Total:	Rs. 150

If the same employee goes back to Bombay, his emoluments will be:—

Basic pay	Rs. 109
Dearness allowance	Rs. 25
Place allowance	Rs. 16
Total:	Rs. 150

53. In para. 6 of the memorandum sent by the Corporation to the union with the letter dated the 11th December, 1954, Ex. 14, it was indicated that the place allowance would be taken into account in fixing the emoluments of the employees. The two agreements were entered into subsequent to that date and there is nothing to show that it was urged by the employees that the place allowance should be excluded in fixing the monthly emoluments at the time of categorisation. It was argued, however, on behalf of the employees that it is implicit in the agreements that place allowance would not be taken into account at the time of categorisation and fixation of the emoluments. I am unable to agree with this. From the Gazette of India, April, 8, 1955, it appears that at first the Corporation allowed place allowance only at Calcutta, Bombay and Delhi. The employees agitated for higher place allowance and for inclusion of other places. It was in this context that para. 4 of the first agreement was arrived at. With the clear intimation already given by the Corporation earlier as in Ex. 14 that place allowance will be included in the emoluments to be fixed, it must be taken that either the employees did not dispute that position when the two agreements were entered into, or if they raised that point it was not accepted by the Corporation. The union refers to para. 6 of the memorandum with its letter dated 10th July 1956. In the first place this letter is subsequent to the two agreements. Secondly place allowance, as such is not mentioned therein. It is sought to be brought within that para. as the words "all emoluments" occur therein. It has been stated on behalf of the Corporation that if the union's demand in regard to place allowance is accepted, it would cost about Rs. two and a half lakhs per mensem. I am of the opinion that the offer which has been now made before the Tribunal on behalf of the Corporation is just and reasonable. The hardship that may be caused to an employee on transfer to a place carrying no place allowance or lesser place allowance will be removed by the application of the formula put forward by the Corporation. I direct accordingly.

54. Sri D. P. Khaitan, who was formerly an account asstt. in the Bharat Airways in the grade of Rs. 175-12-295, raised the following three points of principle:—

(1) He was given 6 chhatanks of milk free everyday and the money value of the same, which according to him is Rs. 11 should have been taken into consideration in fixing his emoluments in the Corporation.

(2) By an award of the Labour Appellate Tribunal, given on the 28th May, 1953, dearness allowance at 20 per cent. of the basic wage was allowed, the minimum being Rs. 31. But before the award could be enforced for the head office of that company, there was integration. His salary on 31st December 1954 was Rs. 199 per mensem. He wants that the dearness allowance given by the award should have been taken into consideration in fixing his emoluments. The Corporation has fixed his emoluments on 1st January 1955 as follows:—

Basic pay	Rs. 140	
Dearness allowance	Rs. 43	
Place allowance	Rs. 12	(when posted at Calcutta)
TOTAL	Rs. 195	

(3) Place allowance should not have been taken into consideration in categorising the employees and in fixing their emoluments.

55. Milk supply was in the nature of an amenity rather than a part of the emoluments in the Bharat Airways. The Corporation, therefore, did not act wrongly in ignoring the milk supplied by that company to its employees.

56. As regards dearness allowance, it is admitted by Sri D. P. Khaitan that he did not actually receive it. In fact it appears from his statement that the award was not *per se* applicable to the head office staff of the company to which he belonged. Moreover, the award does not bind the Corporation because it is not a "successor" of the Bharat Airways. The Corporation came into existence under a statute enacted by the Parliament. It did not succeed the Company. There was a merger of all the ex-airlines companies. Under section 20 of that Act, it was given power to alter the service conditions. The employees of Bharat Airways, therefore, cannot take advantage of the award, Ex. U-327, in the fixation of their emoluments in the Corporation.

56(A). As regards the exclusion of place allowance when fixing his pay in the Corporation, the hardship that may be caused to the employees on transfer to a place carrying no, or lesser, place allowance is now mitigated by the undertaking given by the Corporation.

57. One or two of the ex-airlines companies paid bonus to their employees and it was contended that in fixing the emoluments, the Corporation should have taken this factor also into account. Bonus is a variable factor and it depends upon the profits of the company. When there are no profits, no bonus is paid. On the other hand, basic wages, dearness allowance, personal wages and place allowance are fixed factors and they are payable regardless of the fact whether the company has made profit. Bonus is not a part of emoluments. I am of opinion that the Corporation did not act wrongly by ignoring bonus which any employee may have received from his previous employer. The Services Committee at page 34 of its report was also of the same view.

58. The fifth anomaly in the categorisation urged by the employees relates to 'hali' or 'osmania' currency. It appears that the Deccan Airways paid its employees in "Hali Sicca" while stationed at Hyderabad and the same number of rupees in Indian currency when posted outside that State. Rs. 100 of Indian currency were equal to Rs. 116-10-8 of the hali currency. It is pointed out by the Corporation that as a result of change of currency in Hyderabad State from the 'Osmania Sicca' to Indian Government rupee which came into effect from 1st April, 1953, that is to say, prior to nationalization, the emoluments of the staff were converted into Indian currency at the above rate. The Corporation states that the staff drawing basic salary upto Rs. 600 per month were also paid an additional amount of 10 per cent. (known as 'currency allowance') on the total emoluments. The Corporation says that this change over from 'Osmania Sicca' to Indian currency took place prior to nationalization and as such it is not concerned with it. It is admitted on behalf of the employees that the staff posted at Hyderabad has been allowed by the Corporation 10 per cent. currency allowance. The grievance put forward by the union is that of the two employees of Deccan Airways, having the same status, seniority and emoluments, if one is stationed at Bombay and the other at Hyderabad, then the one at Bombay got higher grade, higher pay and became senior to one at Hyderabad as a result of categorisation. Sri Samtani, representing the Engineers' Association, gave two

examples. He stated that Sri Naini was an A.M.E. at Nagpur in Deccan Airways, drawing over Rs. 600 per month. Sri Andrew who was also in the same company, but posted at Hyderabad, drew equal salary, but in hali currency. Before integration, these two engineers were in equal rank and getting equal emoluments. At the time of categorisation, however, Sri Andrew suffered because of his posting at Hyderabad and was put in grade 13 while Sri Naini who was at Nagpur was put in grade 14. With the grant of currency allowance, the employees of the Deccan Airways posted at Hyderabad are not losers, if the pay which they were receiving on the date of nationalization, *viz.*, 1st August 1953 is taken into consideration. If, however, any employee has suffered in seniority or in categorisation, as stated by Sri Samtani, by reason of his posting at Hyderabad, his case deserves reconsideration. I direct that the Corporation should take up the cases of the employees who have been so prejudicially affected and grant them relief as early as possible. No one should suffer because of the place of posting. This is a principle which should be kept in view by the Corporation.

59. The sixth anomaly pointed out by the employees is that the Corporation has not given benefit of service in the ex-airlines companies in a number of cases and that even where the principle of total emoluments has been applied, the Corporation has varied the contents of total emoluments by including factors like place allowance or conveyance allowance or some other allowances which have resulted in the reduction of the basic pay. In Ex. 16 which is a note of the principles followed by the Corporation in the categorization of the employees in the Aircraft Engineering Department, it says in para. 1 as follows:—

> "In grade 1 benefit of the incremental rate has been given according to the period of qualifying service in the integrating Airlines. In other grades credit has been given in accordance with the length of service assumed as qualifying for entry in that grade."

In Ex. 17 which is a note of principles followed by the Corporation in rectifying the anomalies pointed out in the representations from employees in the departments other than Flying and Aircraft Engineering, against categorisation, it says in para. 3 as follows:—

> "Full credit for continuous service in an integrating airline has been given to employees in grade 1. In grades 2 and 3, full credit has been given for such continuous service as has been rendered in categories of posts borne in those grades. In other grades credit has been given with effect from the date that the employee is deemed to have assumed responsibilities attached to the posts. It is not possible to give credit for service rendered outside the integrating airlines but specialised experience, if any, has been taken into account in categorisation."

In this connection reference may also be made to paras. 78 and 88(iii) of the Services Committee Report which have been quoted in para. 47 of this award. It is contended on behalf of the Corporation that it has taken utmost care possible in assessing professional, technical and other qualifications of the employees taken over from the ex-airlines companies. It is urged that the assessment of qualifications of the employees is the function of the management and when there was no *malafide* about it, that assessment should not be disturbed. From the narrative given at the commencement of the discussions on this demand, it is clear that the Corporation has acted in *bonafide* manner with care and caution. It has

given the benefit of service in the ex-airlines companies by taking into consideration the period for which an employee had performed duties comparable to those in which he was categorised in the Corporation. I see no valid reason to disturb the assessment made by the Corporation. If, however, in any case there has been a mistake by the Corporation in giving full benefit of service in the ex-airlines company, as admittedly in the case of Pay-slip B/2802 (Grade 1), the mistake shall be rectified as early as possible, when the matter is brought to its notice, which should be done within three months of enforcement of this award.

60. The seventh anomaly put forward by the employees is that even though some of the employees were recommended for higher grades by the officers of the Corporation, yet the headquarters did not allow them and in this connection a list of employees of Bombay, Ex. U-244, is filed. The final authority about the categorisation vests in the Corporation. While the opinions of the officers must carry weight, the Corporation is not bound by them. There are certain general principles which are followed by the headquarters in all institutions, and in all Government Departments. Moreover the fact that the persons mentioned in Ex. U-244 were really recommended for high grades by the officers of the Corporation is not duly proved. Assessment of qualifications is, to a certain extent, a subjective factor. In fact Sri Buch admitted that for purposes of categorisation, to start with, the subjective factor did play its part. He contended, however, that later on when the principle of categorisation was evolved by the Corporation, this subjective factor was restricted. By way of illustration he referred to the cases of mechanic 3 in Ex. U-28 and contended that those who possessed the qualifications prescribed in the last column of this exhibit against mechanic 3 should have been put in grade 3. The qualifications entered therein do not mean automatic classification of the persons possessing them in grade 3. They meant only eligibility for a particular grade. It may be that persons possessing the necessary qualifications for a particular grade may be larger than the number required for that grade. In such an event it is not possible to put all the persons having the requisite qualifications in that grade.

61. The 8th anomaly pointed out by the union is as regards the drivers. From the Gazette of India dated April 8, 1955 (Ex. U-48) it appears that drivers were classed in grade 3 and head drivers in grade 4. After the two agreements, revised service rules, Ex. 7, were issued and therein drivers were put in grade 2 and senior drivers in grade 3. The grievance is that the drivers have been demoted and they should be given benefit of interlinking of grades 3 and 4. The Corporation states that the new service rules are in accordance with the recommendations of the Service Committee Report. Be that what it may, the fact remains that some of the recommendations of the Committee underwent modifications as a result of the two agreements; *e.g.*, interlinking of the grades. When the two agreements were entered into, the drivers were already in grades 3 and 4 according to the service rules published in the Gazette, dated April 8, 1955 and if it was intended to put them in grades 2 and 3, as has been done in the subsequent service rules, Ex. 7, there would have been a mention to the effect in the agreements. It was stated on behalf of the Corporation that at the time of the categorisation, it was discovered that a few drivers would lose heavily if they were not allowed to go above grade 3 and to accommodate them the Corporation gave grade 4 to a few drivers. On the 6th September, 1956, the Asstt. Financial Comptroller of the Corporation issued a circular, Ex. U-58, in regard to drivers as follows:—

> "2. Normally all initial recruitment of drivers is to be made in grade 2. The drivers who were on the rolls of the Corporation

on 31st December, 1954 were placed in grades 3 and 4 as a special case for purposes of categorisation. They will continue to move in their respective grades, *i.e.*, 3 or 4 which are not interlinked for any drivers. They will, however, be entitled to secondary increments in their respective scales on reaching the maximum in accordance with the Rules applicable to Secondary increments.

3. As grades 2 and 3 are not interlinked, there is no question of a driver in grade 2 being automatically promoted to grade 3. Those who are promoted or recruited as Senior Drivers will be entitled to pay in grade 3."

It was argued on behalf of the Corporation that if grade 4 is applied to the drivers, then together with the dearness allowance and place allowance, their total emoluments would be about Rs. 235 per month on their reaching the maximum of grade 4. Having regard to the prevailing rates of wages for drivers in bigger stations, which was stated to be Rs. 100-125 per month, it was argued that this amount is far in excess of the market rates and it could not be the intention to raise their wages by so much. The union claims grades 3 and 4 for drivers on the basis of the agreement. My interpretation of the agreements is as follows:—

All those drivers who were in grades 3 and 4 on the dates of the two agreements will continue in those grades and will enjoy the benefit of interlinking of the two grades. Their wages should not be brought down. The directions given in the circular, Ex. U-58 that grades 3 and 4 are not interlinked for drivers is against the agreements and as such inoperative. Such of the drivers, if any, as have lost in their emoluments in view of this circular should be paid arrears of their wages within three months of the date of the enforcement of this award and all those in grade 3 should be allowed to move to the interlinked grade 4, subject to the principle stated above as regards the crossing of efficiency bar. Evidently grades 3 and 4 were given to the drivers having regard to the emoluments which they were receiving in the ex-airlines companies. It cannot, however, be denied that in view of the prevailing rates of wages for motor drivers, the overall wages admissible to a grade 4 driver will be high. That being so, the scale of wages for the drivers not taken over from the ex-airlines companies and freshly recruited after nationalization will be as provided in the service rules, Ex. 7; provided, however, that if any freshly recruited driver was given grade 3 by the Corporation, he will not be deprived of the benefit enjoyed by him. In other words, the scale of wages of no existing driver shall be lowered. It is not unusual to find two scales of pay for the same class of workers. It is a usual feature in the Government Departments, specially when the scales of pay are revised. The old incumbents continue to draw their salaries according to old scales, whereas the new incumbents are paid wages according to the revised scale. In fact, at every revision of scale in Government Departments, option is given to the old incumbents to elect one out of the two scales of pay.

62. At this stage certain anomalies in categorization as pointed out in Ex. U-241 may be discussed. In column No. 2 of this exhibit, the principles raised by the union are mentioned and in column No. 3, the principles followed by the Corporation are mentioned. Column No. 4 thereof contains certain illustrations. As already stated above, Sri Buch on behalf of the employees did not dispute the principles enunciated by the Corporation in Exts. 16 and 17. The whole question is one of the correct application of the principles laid down by the Corporation in

Exts. 16 and 17 and the best way to decide this is to consider the illustrations given in column No. 4 of Ex. U-241. Sri B. D. Saxena, Assistant Financial Comptroller of the Corporation made the following statement in regard to these illustrations:—

"*Pay Slip B*/2802 (*Grade* 1).—His basic pay was fixed at Rs. 54 on 1st January, 1955. He joined the ex-airlines company on 26th January, 1949. His pay should have been fixed at Rs. 60 on 1st January, 1955. This error is admitted by the Corporation. It should be rectified within three months from the date of the enforcement of this award and the arrears should be paid to the employees concerned. On 20th November, 1957, Sri Vimadlal gave an undertaking on behalf of the Corporation to re-examine the appeals of all the grade 1 employees with a view to give them the benefit of completed years of previous continued service in the integrated airlines companies where it has not been done already. This undertaking must be honoured within three months from the date of the enforcement of this award.

Pay Slip B/8980 (*Grade* 2).—This employee was originally a peon and remained so upto 31st December, 1954. He was put in grade 2 with effect from 1st January 1955 with starting pay of Rs. 72. In Ex. U-241 it is a mistake that his basic pay has been shown at Rs. 60. His pay slip was shown to Sri Buch and he admitted that his pay was correctly fixed.

Pay Slip B/9932 (*Grade* 3).—He was a peon on 31st December, 1954 and was originally given grade 2 with an initial salary of Rs. 78. Subsequently on the receipt of his representation it was decided to give him grade 3 of clerk and his basic pay was fixed at Rs. 86. His pay as shown in Ex. U-241 is not correct. Sri Buch saw the pay slip and admitted that in final pay slip his basic pay was fixed at Rs. 86. At the time of nationalization, his basic salary was about Rs. 45. There is no error on the part of the Corporation in this case.

Pay Slip B/9102 (*Grade* 4).—In regard to this employee, Shri Saxena stated that drivers were entitled to grade 3 or 4. This employee was held by the Committee to possess the qualifications required for grade 4 drivers with effect from 1-1-1953 and thus his starting salary was fixed at Rs. 118/-. There is no error in this case also.

Pay Slip B/6053.—This employee was held to have performed the work of a junior traffic assistant with effect from 1-6-52 and for that reason he was given two increments and his starting salary was fixed at Rs. 156/-. There was no error by the Corporation in this case also.

Pay Slip B/9416 (*Grade* 6).—He was a junior clerk in the grade of Rs. 80 - 210. He was put in grade 6 with effect from 1-1-55, as it was held that he performed comparable duties from 1-1-54 and so he was given one increment only and a start of Rs. 200/- per month. There was no error in this case too.

Pay Slip B/7583 (*Grade* 7).—He was a cashier in Air India Ltd. in the grade of Rs. 150—365. On 31-12-54, he was getting Rs. 225/- basic pay and Rs. 103/- as dearness allowance. He was a cashier from 1947. He was placed in grade 7 with effect from 1-1-55 with three advance increments and was appointed as Chief Cashier. Thus his starting pay was fixed at Rs. 256/-. The Corporation held that the rest of his service was not similar to that of a chief cashier. The dearness allowance admissible on Rs. 256/- is Rs. 63/-. Hence his total emoluments in the Corporation on 1-1-55 were Rs. 319/- besides the place allowance to which he may be entitled instead of Rs. 328/-. It is not known whether he was receiving any place allowance in the ex-airlines company. The

difference, however, is small. He must have been compensated for this by personal pay in accordance with the principle laid down by the Corporation in Ex. 14. If, however, this has not been done, it should be done now and the arrears, if any, due should be paid within three months from the date of the enforcement of this award.

Pay Slip B/3120 (Grade 8).—This employee joined the Air India Ltd. as a welder and on 1-12-1948 he was drawing Rs. 8/- per day. He was classed in grade 8 which is for chargehands from 1-1-55 and given a basic pay of Rs. 260/- per mensem. In form CF-I, he stated that he was working as a welder in the Air India Ltd. from 1946. The scale of grade 8 is Rs. 260—15—450. As he was not performing the duty of a chargehand in the previous airlines company, he was not given any advance increment. The Corporation states that this employee could have been put in grade 6 or 7, but when he was given the higher grade 8, there was no question of giving him any advance increment. There does not appear to be any error by the Corporation in this case.

Pay Slip B/827 (Grade 9).—This employee joined Air India Ltd. in March, 1940, as mechanic I. On 31-12-54, he was a chargehand in the scale of Rs. 250—435. He has been placed in grade 9 and the point of entry in that grade was assigned as 1-3-49. The benefit of five years' service was given to him. His pay was fixed at Rs. 415/- per month. There appears to be no error in this case also.

Pay Slip B/6055 (Grade 5).—The point of principle raised by the union in this case is that the place allowance should be given as an additional compensatory allowance and in fixing his emoluments in the Corporation, the place allowance should not have been taken into consideration. The question of place allowance has already been discussed above. The offer which has now been made by the Corporation, that is to say, if an employee is transferred to a place carrying no or lesser place allowance, then he will be compensated for the loss in the place allowance, has been held as reasonable. In this connection the example of pay slip B/6036 given in column No. 3 of Ex. U-241 may be mentioned. It was stated on behalf of the Corporation that in the case of this employee, place allowance was not taken into account in working out his new emoluments, because no such allowance was admissible to him as he was at Ahmedabad, for which no place allowance is authorised.

63. In item No. 3 of Ex. U-241, the point of principle raised by the union is that the Corporation did not take into consideration the nature of duties performed and the responsibilities shouldered by certain employees in the ex-airlines companies nor were their qualificatons properly assessed. It is claimed in the schedule annexed to Ex. U-241 that the existing employees should be fitted in proper grades. It has been held above that the Corporation has acted *bona fide* in assessing the worth and experience of the inherited staff. The assessment should not be interfered with.

64. The ninth anomaly urged on behalf of the employees is that the total emoluments of the employees of the ex-airlines companies should in no case be less than what they were receiving before. This point was kept in view by the Services Committee as will appear from paragraphs 75 to 83 of their report quoted in para 47 of this award. They fore-saw, however, that there could be a few cases in which there may be sharp drop in the emoluments and so in para 83 they recommended that even if after the grant of personal allowance an employee loses, then he

should be given the choice either of accepting the terms offered to him or of seeking employment elsewhere. The Corporation also kept this point in view and enunciated this principle in para 6 of the memorandum Ex. 14. Shri Y. M. Verma, Secretary of the Corporation stated that only 30 employees, out of over 7,000 got wages less than what they were receiving in the integrated companies. He added that it was not possible to compensate them by the grant of personal pay because the rule is that the basic wages plus personal pay should not exceed the maximum of the grade. I hold that the principles put forward by the employees has been kept in view by the Corporation so far as possible.

65. Tenthly it is urged on behalf of the employees that fresh recruitments made by the Corporation has created anomalies. By the Air Corporation Act. two Corporations were constituted *viz.*, Indian Airlines Corporation, dealing with the internal Air Transport and the Air India International, dealing with the international Air Transport. It appears that soon after the nationalization, quite a large number of employees of the ex-airlines went over from this Corporation to the Air India International. According to Employees' Union, the number was 1797, *vide* Ex. U-328. Sri Vimadlal, however, stated that the number was about 1000. Be that what it may, the fact remains that quite a number of the employees had to be transferred to Air India International. Sri Y. N. Verma, Secretary of the Corporation submitted before the Tribunal that the task before it was tremendous in its initial stages. It had to evolve a pattern of administration. Out of heterogeneous matters it had to evolve a homogeneous pattern. The work had to be carried on and the services had to be maintained and after the transfer of certain employees to the Air India International, it was essential for the Corporation to make fresh recruitments from outside. It was in the beginning very difficult to fix the standard force as it was only after some experience that this could be decided upon. He added that now that the strength of the force has been standardised, it has been discovered that on true business principles, the strength in some of the higher grades should be less than what it is, and in this connection I am referred to Ex. 64 filed by the Corporation. It is stated that most of the new recruitments are in grades 1 to 4 and uptill now only about 15 Accounts Officers, 3 Labour Officers, 2 or 3 Stores Officers and 3 or 4 officers in catering and transport department have been recruited from outside in grades 10 to 12. All these recruitments in grades 10 to 12 were made after categorization. Sri Verma said that the number of promotion from old employees is fairly large. For example, although in the rules, recruitment to the post of traffic officers can be from the outside, but in the 18 vacancies which have occurred since nationalization, all appointments have been made from the old employees. He contended that the outside recruitment did not adversely affect the old employees who were also given an opportunity to apply for such posts.

66. Sri Buch on the other hand contended on behalf of the employees that on account of the fresh recruitments from outside, the old employees have been prejudiced, because the higher posts which would have gone to old employees at the time of categorisation have been denied to them and they have suffered also in seniority. He claimed that the old employees should be first categorized having regard to the number of posts available to them as on 31st December, 1954 and then the fresh recruits should be fitted in. He wants the whole categorisation, made by the Corporation, to be reviewed in this light. In view of the circumstances

narrated on behalf of the Corporation, it is evident that fresh recruitment was necessary on the transfer of some of the employees to the Air India International. National interest demanded the maintenance of the Air Services. It is too late in the day now to disturb those fresh recruitments. It is a *fait accompli*. It was pointed out that the acceptance of the principle urged by the employees implied the demotion of at least some of the men who were recruited from outside. The Union which had members also from the fresh recruits was asked whether it was prepared for this. It was stated on behalf of the union that it did not want the demotion of any existing employee, but what it wanted was that the old employees should also be given the higher grades. In other words, the union asks for an increase in the strength of the higher grades. Having regard to the financial position of the Corporation, this should not be acceded to.

67. As regards seniority, Sri B. D. Saxena, Assistant Financial Comptroller explained that the seniority of fresh recruits was determined on the basis of the dates of entry. An old employee would have the date of entry not later than 1-1-55 and those recruited after 1-1-55 would be junior to the old employee. But if the date of entry of an old employee in a particular grade is 1-1-55 and the recruitment was made in that grade prior to 1-1-55 then the new recruit can be senior to the old employee. An old employee who was working in a particular grade and was classified in an equivalent grade would, in all normal circumstances, be senior to a new recruit taken in a comparable grade, because he must have joined after 1-8-1953. It is not proper to disturb the rule of seniority as stated by Sri Saxena without giving a hearing to the new recruit who may be prejudiced by any order passed against him. I can only say that if an employee of ex-airlines company represents to the Corporation in regard to his seniority in the grade as against any fresh recruit, the Corporation may consider it after giving an opportunity to the fresh recruit to make representation, keeping in view the principle that if the old employee has worked for a longer period in the Corporation and in the ex-airlines company on a comparable post, then the old employee should be made senior to the new recruit.

68. Eleventhly, it has been urged by the employees that anomalies have occurred because categorisation took place before the required strength in each grade had been finalised (*vide* page 146 of the proceedings) and in this connection paras 76 to 80 at pages 32 and 33 of the Services Committee Report and clause (d) of para 29 of the second agreement are referred to. Para. 29(d) of the second agreement hardly helps this point. It appears that the standard force was finalized in December, 1956 (*vide* Exts. 21/1 to 21/4). This claim of the employees is inconsistent with clause (d) of this demand. Therein the employees ask that "promotion should be effected *after* categorisation is finalized and thereafter region-wise definite standard force or establishment strength determined". If the standard force had been prescribed as a first step, even then the employees would have protested saying that the strength had been arbitrarily fixed. For fixing the standard force some experience of the working of the Corporation was necessary. In fact Sri Buch admitted at page 206 of the proceedings that according to the demand the union asks for fixation of the standard force after categorisation. That being so, there is no substance in this demand.

69. The twelfth point of anomaly urged on behalf of the employees relates to the chief cashiers. Dealing with the point of entry of the

employees into the grade allotted to them, Sri Buch referred to para 79 at page 33 of the Services Committee Report and to seniority list, Ex. U-186, of the Accounts Department. He contended that at Bombay, 22 persons were given the grade of chief cashiers. Of them No. 1 to 6 were given correct date of entry in the grade, but others were not. He stated that No. 21, Sri R. J. Kripalani was given date of entry as 1-1-55, although he began working in the ex-airlines company as cashier from 1948. It was stated that all the 22 persons described as chief cashier in the seniority list were really working as cashier in Bombay. Sri Buch contended that Sarvasri Rane and Desai, Nos. 9 and 10 began working as cashier in 1946 and owing to the wrong fixation of date of entry, they have become junior to Sri Bhandarkar, No. 6, who joined in 1946. All these three men were in Air India Ltd. It was complained that the promotion was adversely affected by wrong fixation of the date of entry. On behalf of the Corporation, Sri B. D. Saxena stated that Sri Kripalani joined the old company in March, 1948, with a start of Rs. 120/- as basic wages and Rs. 46/- as dearness allowance. On 31-12-54, he was in the grade of Rs. 150—15—225—20—365. He was in Air India Ltd. and was in cashier's grade. The Air India Ltd. had two grades for cashiers—one lower and other higher. The Corporation categorized the workers on the basis of suitability. It found that there were 22 persons to be classified as chief cashiers. Although so many persons were not needed for the post of chief cashier, yet they were given the grade of chief cashier in order that they may not lose in their emoluments. The fact is that some of them are working as cashiers although they have been classified as chief cashier. The position appears to be that some of the cashiers of the old airlines companies have been given the grade of chief cashier in order to save them from fall in their emoluments. That being so, the employees should have no grievance about it. It has already been held above that the assessment of suitability made by the Corporation should not be interfered with. As regards seniority, however, it seems to me that if the contentions of the employees regarding Sarvasri Bhandarkar, Rane and Desai are correct, then the Corporation should rectify the same after giving opportunity of representation to all those who are likely to be adversely affected. I direct that while the point of entry of the employees into their respective grades need not be interfered with, seniority *inter se* of the employees in the same grade be reconsidered by the Corporation on the receipt of representations from the employees concerned. Such representations shall be made by the employees within three months from the date of the enforcement of this award. The Corporation shall notify the representations to the employees concerned likely to be affected prejudicially and give them an opportunity to put their points of view. After this representations shall be disposed off as expeditiously as possible.

70. Representations received from individual employees may now be examined from the points of view of the general principles raised by them.

Sri L. P. Bhageria.—He examined himself. It appears that his basic pay in the Bharat Airways was Rs. 180/-. The final pay slip issued by the Corporation to him grants him the following emoluments:—

Basic pay	Rs. 142
Dearness allowance	Rs. 48
Place allowance	Rs. 12
TOTAL	Rs. 202

His first grievance is that his basic pay should have been fixed at Rs. 200. When his total emoluments have been fixed at Rs. 202, there is no cause of complaint. As already mentioned above, if he is transferred to a station where there is no or lesser place allowance, he will be compensated by payment of personal pay. His second grievance is that the dearness allowance awarded by the Labour Appellate Tribunal, but not enforced before the nationalization, should also have been taken into consideration and in this connection reliance is placed upon section 18(3) of the Industrial Disputes Act, 1947. As already stated above, the Corporation is not a "successor" or "assignee" of the Bharat Airways in the eyes of law. As such it is not bound by the award of the Labour Appellate Tribunal. The staff from the eight ex-airlines companies came over to the Corporation and they were governed by the varying terms and conditions of employment. It had to evolve a rational wage structure and while the terms of employment obtaining in old companies were relevant factors to be taken into consideration, there was the over all necessity of a homogenous pattern of wage structure and of service rules. The third point raised by him is that he was the head of the Provident Fund Section in the Bharat Airways and as such he had capacity to take charge of a section. He claims that he should have been put in grade 10, 11 or 12 and not in grade 4. In form CF-I (Ex. 18) submitted by him, he had given his educational qualification as matriculate only. He entered Bharat Airways in 1951. It is significant that in that form he did not fill in grade or time scale. He has not passed any examination in accountancy. I see no force in this contention. The fourth point urged by him is that free milk supply by the Bharat Airways to its employees should also have been taken into consideration. It has already been held above that it is an amenity and no part of the emoluments and the Corporation was not wrong in not taking it into account when fixing emoluments.

Sri D. P. Khaitan.—He was also an employee of the Bharat Airways and his case has already been partly dealt with above. He was appointed in that company on the 1st January. 1953. On 1st August, 1953, his salary was Rs. 175. Having earned two increments, his pay on 1st January, 1955 was Rs. 199. There was no allowance in that company. He raises the question of place allowance, dearness allowance and cost of free milk supply. His total emoluments on 1st January, 1955 were fixed as follows:—

Basic pay	Rs.	140
Dearness allowance	Rs.	43
Place allowance	Rs.	12
TOTAL	Rs.	195

If this is correct, he should have been given personal pay of Rs. 4, according to the formula laid down by the Corporation in para. 6 of Ex. 14. The arrears, if any, due to him should be paid within three months of the enforcement of this award. He raises also the question of seniority and states that persons lower in rank than him have been given higher grades. As already stated, assessment of worth of the employees of the ex-airlines companies, made by the Corporation, requires no revision.

Shri H. C. Sen.—He was Procurement Officer in the Airways India Ltd., drawing a fixed salary of Rs. 300 without any grade or allowance. His first grievance is that his basic salary was fixed at Rs. 220 instead of Rs. 300, although his total emoluments were more than Rs. 300 by grant of

dearness allowance and place allowance. He has been put in grade 7 and can rise upto Rs. 340. His total emoluments on 1st January, 1955 were fixed by the Corporation at Rs. 331 as follows:—

Basic pay	Rs.	256
Dearness allowance	Rs.	63
Place allowance	Rs.	12
TOTAL	Rs.	331

He should, therefore, have no grievance for loss in emoluments. His second contention is that he should have been appointed as an officer having regard to the position which he held in the Airways India Ltd. That involves the question of assessment of his worth which need not be interfered with, as already held above. His third contention is that bonus which he was receiving in the old company should have been taken into consideration. Bonus is a variable factor and as already held above, it should not have been taken into account when fixing the emoluments. His fourth grievance is that by fixing his basic pay at Rs. 256, he has lost in his provident fund. It appears that in the Airways India Ltd. he was contributing to the provident fund at 6¼ per cent., whereas in the Corporation he is contributing to the provident fund at 8⅓ per cent. on the basic pay. Para. 14 of the Provident Fund Regulations enforced in the Corporation shows that the minimum contribution is 8⅓ per cent. and maximum is 18 per cent. The Corporation contributes to the fund every month 8⅓ per cent. of the pay of each member, as employers' contribution, irrespective of the total amount of subscription of each employee. I am unable to hold that Sri H. C. Sen has lost anything by way of contribution to the provident fund.

Sri A. L. T. Ponnuswamy, Senior Stenographer, Colombo (Ceylon).— According to his representation, the grievances for which he seeks redress are:—

"(a) *Categorisation.*—The basic pay, grade and designation as given in his payslip made effective from the 1st January, 1955.

(b) *Scope in Trade.*—Avenues for progress and promotion."

He was formerly in the Air India Ltd. Firstly he refers to para. 27 of the Services Committee Report in which the Committee remarked that the wage structure recommended by it may not be suitable for staff located at foreign stations such as Karachi, Colombo, Rangoon and Kathmandu and recommended that the Corporation may examine the conditions in each foreign place and make suitable adjustment in the wage structure for the employees posted there either by applying wage structure based on the Indian conditions supplemented by suitable foreign allowance or by devising a separate wage structure for each place related to the relevant local conditions. The order of reference does not contain this demand and so this is beyond the purview of this Tribunal. It may be mentioned, however, that the dearness allowance in Ceylon is higher than that prevailing in the stations in India. Sri Y. N. Verma, Secretary of the Corporation has stated that by a separate agreement this has been done for the Ceylon employees. This employee has been given grade 6 of Rs. 190-10-300. He says that he was in the scale of Rs. 130-10-150-15-225-20-365. He has thus lost in the maximum of the grade allotted to him. Secondly, at first he was designated by the Corporation as Senior Stenographer and two years later he was informed that he should be designated as stenographer. His designation has thus been lowered.

Thirdly, he says that having regard to the local conditions of Colombo and the market rate of stenographers with 17 years' experience which he possesses, he should have been awarded a higher grade. Fourthly, he contends that he has performed in the past secretarial duties and is even now performing them. If the facts stated by him are correct—a matter in which I have not gone into—his representation is worthy of consideration in view of para. 27 of the Services Committee Report. I would ask the Corporation to bestow serious consideration to his representation and to pass order which may be just and fair, as expeditiously as possible.

Sri C. V. Dalal, Traffic Officer, Bombay.

Sri B. A. Kamat, Traffic Officer, Bombay.

Sri Bhumitra, Traffic Officer, Nagpur.

The basic wages together with allowances of these officers exceed Rs. 500, hence they are beyond the purview of this reference.

Sri A. M. Joshi, Traffic Officer, Bombay.—His total emoluments on 1st January, 1955 were fixed at Rs. 500, so he comes within the purview of this reference. His sole grievance relates to seniority. I have not gone into the matter as individual representations have been held to be beyond the purview of this Tribunal. In view of the facts stated by him, I would ask the Corporation to go into the matter and to do what is just and fair as early as possible.

Sri G. N. Malkani, Traffic Officer, Bombay.—His emoluments were fixed at Rs. 460 on 1st January 1955 and so he comes within the purview of this reference. His representation relates to the fixation of his salary on 1st January, 1955. It is admitted in his representation that he has not lost in the emoluments fixed by the Corporation. He contends, however, that he has lost in his prospects and he quotes the example of Sri C. V. Dalal who was upgraded by the payment of Rs. 25 on the occurrence of a vacancy in Grade 12, he can go to it. I see no matter of general principle arising out of this representation.

Staff at Siliguri.—They raise the question of place allowance or compensatory allowance for Bagdogra and Siliguri. This does not fall within the terms of reference, as admitted by Sri Buch.

71. In its written statement dated the 7th August, 1957, the engineers have put forward the following grievances:—

(1) Anomalies arising out of "improper categorisation" have not been removed by the Corporation although it agreed to do so in the agreement, Ex. 25, which was entered into with the engineers.

(2) There has been "wrong implementation" of the rules concerning the grant of license allowance to A.M.Es.

(3) There has been "wrong implementation" with regard to the preparation of the seniority list of A.M.Es.

(4) Radio Engineering Personnel should be classified as A.M.Es./ Inspectors.

(5) Charter of demands dated the 4th March, 1957 should be conceded to by the Corporation.

72. Licence allowance and the charter of demands dated the 4th March, 1957 do not fall within the term of reference to this Tribunal, excepting so far as that charter includes the points raised in the terms of reference.

73. A preliminary objection was raised by the Corporation against the demand put forward by the Engineers' Association. The plea of estoppel was put forward. It was argued that this reference has been made by the Central Government on the demands of the Employees' Union and the engineers are entitled only to the demands put forward by that union and not to raise independently any separate contentions. Further reliance was placed upon para. 19 of the agreement, Ex. 25, entered into between the Corporation and the Engineers' Association in which it was provided that a committee shall be set up to go into the individual representations made by the engineers and it shall include a senior engineer from an Air Transport Undertaking, preferably from Air India International Corporation for the purpose of advising the committee in technical matters, relating to the responsibilities, nature of duties, assessment etc. of the aircraft A.M.Es. It was argued that as the Corporation complied with this part of the agreement by setting up the agreed committee, the engineers are estopped from questioning the decision arrived at by the Corporation.

74. Sri Buch stated that the engineers did not propose to put forward any separate ground for themselves. They supported the written statement filed by the general employees' union and proposed to give illustrations as to how injustice was done to the engineers in the application of the principles on the basis of which categorisation is said to have been made. Sri Vimadlal contended, however, that the engineers could not even support the Employees' Union so far as categorisation was concerned and in this connection he referred to the principles of categorisation as contained in Exts. 16 and 17 and pointed out that the principles for the engineers were different from those for the general employees. Sri Buch replied that it was not open to the Corporation to put forward the agreement, Ex. 25, as it did not implement the various parts of the same and it was not open to it to rely upon it, because a party which bases its plea of estoppel upon an agreement must come with clean hands to show that it has itself carried out that agreement. He referred to Ex. 12 which contains the composition of various sub-committees and pointed out that originally no officer of the Air India International was on the Committee. It was stated on behalf of the Corporation that Sri D. K. Dutt of the Air India International was later associated with the sub-committee from the 10th October, 1955. Lastly, it was argued by Sri Buch that the function of the sub-committee was only advisory and not of taking decisions and so its position was not that of an arbitrator.

75. The very first para. of the order of reference recites that the dispute which has been referred to this Tribunal is between the Corporation and "their workmen". That being so, the engineers can put forward their claims so far as they are covered by the terms of reference, but not beyond those terms. The plea of any bar such as those of *res judicata* or of estoppel are not *per-se* applicable in industrial cases. It will be seen from section 19 of the Industrial Disputes Act, 1947, that settlements and awards have binding force for limited periods. While sanctity should be attached to settlements and awards and they should not be departed from soon after their coming into force, unless there are pressing reasons for the same, they cannot be treated by a party as a bar against re-opening of the questions dealt with by them. Taking all the circumstances into consideration, I am of opinion that the plea of estoppel fails.

76. In para. 69 of the Services Committee Report, the Committee came to the conclusion that possession of certain licenses should be laid down as a basic qualification of engineers in each of the different grades; and the allowances, if any, should be restricted to licenses held, over and

above the basic ones. The committee's suggestions regarding such qualifications are given in Appendix IV at page 113 of the report to which reference is invited. On the 11th December, 1954, the Corporation circulated a memorandum concerning remuneration (Ex. 14), terms and conditions of service of the employees. In regard to A.M.Es., who were classed in grades 10 to 15, the following minimum qualifications for entry in the respective grades were mentioned:—

> "Aircraft Maintenance Engineers falling in these grades have been categorised largely in accordance with the principles mentioned by the Services Committee in Appendix IV of the Report. Age, academic and technical qualifications, length and variety of experience have been taken into account. The minimum qualifications laid down by the Committee in the matter of possession of the minimum number of licences for each category have been waived where length of service and specialised technical knowledge as required by the Corporation for the types of duties performed justified it."

Subsequent to this, on the 5th May, 1955, there was the agreement (Ex. 25) between the Engineers' Association and the Corporation with the intervention of the Hon'ble Minister of Communication and the Chairman. The following were the provisions in that agreement regarding the pay scales, licence pay and anomalies arising out of categorisation of the A.M.Es.:—

"1. *Pay Scales*:—

(A) Grades 10 250-15-370.
11 320-15-440.
12 400-15-550.

to be inter-linked to read as follows:—
250-15-320 (EB) -15-400 (EB) -15-550.

All engineers categorised in grade 10, performing the duties of an A.M.E. will start in the same scale with Rs. 320 as the base.

(B) Grades 13 550-25-750.
14 750-50-1050.

to be inter-linked to read as follows:—
550-25-750 (EB) -50-1050.

(C) Grades 15 and above accepted as offered by Corporation.

Engineers in grade (10-11-12) with single category licence who have no opportunity of acquiring additional categories may in selected cases on the basis of their record be considered for promotion to grade 13, at the discretion of the Corporation.

2. *Licence Pay*:—

(A) *Categorisation.*—Licence Pay at the rate of Rs. 30 p.m. per category shall be admissible to A.M.Es. in grades 10 and above if the category covers Aircraft used in the Scheduled Services of the Corporation, which is over and above the prescribed minimum for the grades.

(B) *Endorsements.*—Rupees Fifteen (Rs. 15) p.m. per endorsement in the same category upto maximum of Rs. 30 p.m.

Anomalies Arising out of Categorisation of A.M.Es.

A Committee shall be set up to go into the individual representation made in this behalf and this Committee shall include a *Senior Engineer from an Air Transport undertaking preferably from Air India International Corporation* for the purpose of advising the Committee in technical matters relating to the responsibilities, nature of duties, assessment etc. of aggrieved A.M.Es.

The terms of settlement enumerated as Item 1 to 19 above, shall come into force with retrospective effect from the first day of January, 1955."

On the 2nd April, 1956, the Corporation circulated the principles followed by it in rectifying the anomalies pointed out in the representations from the employees in the Aircraft Engineering Department against categorisation (Ex. 16). According to the Corporation, 33 points were raised in those representations. Against each point, the Corporation has stated in Ex. 16 the principle which it followed in dealing with it. The principles which have been enunciated by the Corporation in Ex. 14 or Ex. 16 are not disputed. The complaint is only against the implementation of those principles. In their application dated the 19th October, 1957, the Engineers' Association contend that the agreement in regard to pay scales and categorisation has not been properly implemented in the following manner:—

"1. Inconsistencies, bearing no yardstick or definite principle in Basic categorisation by the Corporation are highlighted by the following facts:—

(i) A.M.Es. who had obtained their initial licences much earlier than A.M.Es., who obtained their initial licences on the Corporation's fleet of aircraft have been offered the same point of entry, thus giving no benefit of seniority to the former.

(ii) If Salary in the previous Company subsequently nationalised was a criterion, glaring evidence is noticeable in the list attached as examples supporting the case. It appears that no attempt at neutralising the losses in emoluments has been made.

2. A.M.Es. belonging to certain Airlines Companies where a free transport facility was provided in assessing the losses in emoluments this has not been taken into consideration whereas cash beneficiaries—of transport allowance have had the benefit of this in their total emoluments as offered by I.A.C.—This has thus created further anomalies.

Details pertaining to paras. 1 and 2 above are mentioned below as and where applicable to individual A.M.Es., concerned and also other relevant factors as prevalent then in the airlines companies (Nationalised).

The old employers valued the experience of the A.M.Es. concerned in number of years of licence held in preference to Engineers holding both categories 'A'/'C' since utility factor from the point of view of workload having been constant. Thus an additional category in licence did not induce any additional benefits to a great extent and as such it may be noticeable that most operators had Engineers with single licence though they had held it for a long time. When changes with the I.A.C. necessitated obtaining the other licence this was obtained by

A.M.Es. in most cases. But this has resulted in their being wrongly placed in seniority or loss of emoluments while similar cases have been treated on a better footing and in some cases enjoying the benefit of even a higher grade.

Salaries of Airways (India) engineers which in itself has been accepted by the Services Committee as low was substantiated by a remuneration of Annual Bonus as a regular compensation and incentive to them. Benefit of this has been denied to them in the Corporation thus creating anomaly."

77. A list Ex. E.42 has been filed to illustrate that 20 A.M.Es. have suffered loss in emoluments ranging from Rs. 5/- to Rs. 470/- per month. Some other instances have also been cited. Lists Ex. E-40 and E-41 have been filed to give illustrations of the anomalies which have occurred as a result of categorisation of A.M.Es. made by the Corporation. For instance, it was pointed out that the A.M.E. K. K. Banerji who obtained the licence for the first time in March, 1950 held two licences and was drawing Rs. 605/- on 31-12-54. On 1-1-55 he was categorised on a basic salary of Rs. 550/-. On the other hand persons junior to him who are mentioned in Ex. E-40 and who held only one or two licences were given a higher salary than what they were drawing on 31-12-54. It was admitted on behalf of the Engineers' Association that he was put in the right grade, but it was stated that his starting salary on 1-1-55 was lower than what it should have been. In this connection the case of Sri Mehar Singh in Ex. E-40 was referred to and it was pointed out that although he held only one licence, as both the licences mentioned therein are of 'C' type, and although his salary on 31-12-54 was Rs. 555/- yet he has given a start of Rs. 600/- on 1-1-55. The slip pasted at this exhibit was referred to and it was pointed out that the total emoluments of Sri K. K. Banerji prior to 1-1-55 were Rs. 791 while on 1-1-55 it was fixed at Rs. 695/-. Further it was pointed out that Sri V. P. Kumar should have been put in grade 10 as he held only one licence, but he was put in grade 13. Sri T. D. Kumar, Engineering Manager in the Corporation filed Ex. 45 in reply to Ex. E.40 and explained that as Sri K. K. Banerji held only one licence, he could have been put utmost in grade 12 but having regard to the experience, length of service and the position which he was holding in the former airlines company he was put in grade 13 with the condition that he should obtain a second licence within a year. This formula was evolved, according to Sri T. D. Kumar, as a result of the discussions which the Chairman had with the Association, though it was not recorded in the minutes. Sri T. D. Kumar stated that if any A.M.E. did not obtain the second licence within a year, he was reminded of the same and extensions also were given. As regards A.M.E. Mehar Singh, he stated that he was given a start of Rs. 600/- per month by the Committee on the ground of the assessment of his merit and qualifications. He pointed out that Sri V. P. Kumar held two licences and this was proved in the course of proceedings. It may be mentioned here that Sri V. P. Kumar got a big jump from Rs. 305/- on 31-12-54 to Rs. 575/- on 1-1-55. Similarly A.M.E. D.C. Sahai got a big jump from Rs. 330/- to 600/-. On the other hand A.M.E. Sen Gupta lost Rs. 450/- in total emoluments by categorisation. His basic salary on 31-12-54 was Rs. 1,100/- and on 1-1-55 it was fixed at Rs. 750/-. Sri T. D. Kumar filed Ex. 48 to show that A.M.E. Berry and G. V. Rao who too had two licences got similar big jumps from Rs. 268/4/- to 680/- and from 377/2/- to 705/- respectively. He says that the categorisation was done by a Committee consisting of himself as the Chairman and three engineers—one from each base. Later on Sri D. K. Dutt

of the Air India International was also associated with the Committee. That Committee dealt with the cases of about 2,500 men and it took about 10 months, though it did not sit continuously. He says that it is very difficult to state in regard to each individual as to what factors weighed with the Committee in fixing their salary. Dealing with the cases mentioned in Ex. E.41, Sri T. D. Kumar filed Ex. 49 in which the facts relating to three A.M.Es. *viz.*, K. J. Hedge, K. N. Krishna and G. S. Samtani are mentioned. It appears from Ex. 49 that although these three A.M.Es. complained that they have been wrongly categorised, yet they have gained in their total emoluments. As regards Sri Hedge, he stated that he was offered a post of A.M.E. in grade 10 in March, 1956 at Calcutta, but he declined to accept it. Sri K. N. Krishna, according to him was not incharge of any section and did not hold any position of higher responsibility in the ex-airlines company and so he was put in grade 13. In regard to Sri Samtani, he said that if he be treated as holding 'X' licence, then according to the recommendations of the Services Committee Report he would have been entitled to grade 10, 11 or 12. Actually his pay was fixed at Rs. 430/- which was higher than the starting pay of grade 12. He was categorised in selection grade 9 as Senior Examiner. With the letter No. CPO/4241, dated the 8th March, 1956, the Corporation, in reply to the Engineers' Association's letter dated the 17th February, 1956, enclosed a memorandum containing a reply to the points raised by the Association. Dealing with item No. 19 in the memorandum, the Corporation stated as follows:—

> "The Corporation is, however, agreeable to give another opportunity to an employee who is genuinely agrieved as a result of the decision of the Engineering Committee set up for the consideration of appeals. Requests for such reconsiderations of the case by the same Committee should be made in writing by the employees affected."

It is thus evident that the Corporation was willing in that letter to reconsider the cases of engineers in which the grievance was genuine. It was a graceful offer inspired by the motive to do justice to the engineers and to accommodate them, so far as possible. It was a reasonable offer. In short the contentions put forward by the Engineers are:—

(1) that in several instances the emoluments fixed by the Corporation on 1-1-1955 are less than what they were in the ex-airlines companies;

(2) that there was a discriminatory treatment in categorisation and in fixing their emoluments as on 1-1-1955;

(3) that the licences held by an A.M.E. in certain instances have not been given due weight while the same was done in other cases and thus there was a discriminatory treatment;

(4) that A.M.Es. have not been arranged in the proper order of seniority;

(5) that licence pay has not been given in certain cases;

(6) that qualification and experience have not been properly assessed; and

(7) that some of the engineers suffered in view of the fact that they received their salary in Osmania Currency and now it is in Indian Currency.

As regards the claim relating to 'Osmania Currency', the matter has already been dealt with above. In view of the offer made by the Corporation itself in the memorandum enclosed with its letter of March 8, 1956, and the intrinsic nature of the contention raised the Corporation should review the categorisation of the aggrieved engineers who should make their representations to the Corporation within two months from the enforcement of this award. The Committee which shall deal with these representations shall consist of three persons—(1) a high ranking officer of the Engineering Department of the Corporation nominated by the Corporation, (2) a person not connected with the Corporation but having knowledge of aircraft engineering and occupying a responsible position, nominated by the Corporation, and (3) a representative nominated by the Engineers' Association. I have provided for the Engineers' Association's representative on the Committee because of the general policy of the workers' participation in the management. In the Second Five Year Plan, this policy has been approved. At the Tripartite Indian Labour Conference, held in July last at Delhi, there was general agreement, in principle, with the basic idea of workers' participation in management. There was some discussion at the Conference whether the idea should be implemented through legislation or by mutual agreement between employers and employees in selected industrial establishments. For the present the Conference agreed to give a trial to the initiative of employers and employees. The presence of the engineers' representative on this Committee will inspire confidence among them and the points of view of the engineers will be forcefully put before the Committee. When the engineers' representative will have the responsibility in the Committee, he will perceive the points of view of the Management and he is likely to act in a responsible manner. This is a nationalized industry. The engineers are educated and a start may be made with them for giving effect to the principle of workers' participation in management by associating their representative in solving this vexed problem of categorisation. I must state, however, that if in deciding the representation of any A.M.E., another A.M.E. is likely to be affected adversely, then an opportunity should be given to the latter to represent his points of view before the Committee.

78. The case of the pilots and the radio officers may now be dealt with. Originally they had not filed any statement of their claims and had said that the Employees' Union will protect their interests. In November sitting of the Tribunal, however, they engaged a separate counsel, Sri Y. Kumar, and filed their own statement of claims. In regard to categorisation they stated as follows:

> "Even according to the Corporation's own yardstick, the categorisation of some of the pilots and the radio officers, called 'workmen' had been done wrongly and we seek redress where injustice has been done."

79. It appears that sometimes in September, 1955, an agreement, Ex. P-5, was reached between the Corporation and the Radio Officers' Association. In regard to the pay scales, the agreement provides as follows:—

> "(1) Junior Radio Officers Grade will be: 320—20—440.
>
> Senior Radio Officers Grade will be: 440—30—650—30—710—750.
>
> Selection Grade: 750—50—1050.
>
> Promotion from Junior to Senior is automatic subject to efficiency. Whereas in the case of selection grade promotion is

subject to vacancy and seniority subject to merit (sd. Y. N. Verma). A certain percentage to be discussed later will be placed in the Selection Grade 3 Years upgrading for all Radio officers in the Service of I.A.C.

(2) R/O shall be eligible for a grant of Efficiency Bonus in the following rate:—

Selection grade & Senior Radio Officers	Rs. 100
Junior Radio Officers	Rs. 50

This will be treated as part of the basic salary included for the calculation of Provident Fund."

With the pilots, the following agreement in regard to salary allowances etc. was arrived at between their association and the Corporation on the 16th February, 1956 (Ex. P-1):—

"Pay Scales	*Grade*	*Rank*
Rs. 400 fixed		2nd Officer.
Rs. 550—40—750		1st Officer.
Rs. 750—50—1050		Jr. Captain.
Rs. 1050—50—1200		Captain.
Rs. 1250—60—1550		Sr. Captain.

NOTE.—The grades of First Officer and Jr. Captains as given above shall apply to Pilots who joined Corporation after 1st January, 1955.

For those pilots who joined the Corporation between 31-7-53 and 31-12-54 the salary grades will be as follows:

FIRST OFFICER Rs. 590—40—750.

JUNIOR CAPTAIN Rs. 800—50—1050.

and for those pilots who were on the rolls of the Corporation on 31-7-53, the salary grades will be as follows:

FIRST OFFICER Rs. 630—40—750.

JUNIOR CAPTAIN Rs. 850—50—1050.

The terms of settlement as enumerated in item 1 to 10 above shall come into force with retrospective effect from 1st day of January, 1955.

Special Notes—

(i) A First Officer on completing 3 years' service shall be trained and checked for Command and on getting the Command he shall be promoted to the grade of Junior Captain from the date he secures the Command.

(ii) First Officers who have reached a maximum of the grade (*i.e.*) Rs. 750 on obtaining command shall be placed at Rs. 800 as Junior Captain in the grade of Rs. 750—50—1,050 (Junior Captain).

(iii) If for no fault of his a First Officer's Command is delayed for more than 6 months (for example due to non-availability of aircraft, Instructor, etc.) he should get the grade of Junior Captain with effect from the date he completes 6 months following his 3 years service.

(iv) All Junior Captains with at least a thousand hours in command and two years of command service with effect from the P.I.C. endorsement shall be given the starting salary of Rs. 1,050 in the grade of Rs. 1,050—50—1,200 (Captain's grade) subject to vacancies. The last condition, namely, subject to vacancies, will not apply to pilots who were in the employ of the Corporation on 1st August, 1953.

SALARIES, ALLOWANCES, ETC. OF IAC PILOTS

Command Pay:

(a) Rs. 50 for one Command Endorsement.

(b) Rs. 100 for two command endorsements, and

(c) Rs. 150 for three or more command endorsements:

Provided that the Command Endorsements shall be on aircraft used by the Corporation (For commercial operations).

Navigator's Allowances:

Rs. 75 per month for Second Class Navigator's Licence.

Overtime Allowance:

(a) Jr. Captain Rs. 9 per hour.

(b) Captain and Sr. Captain Rs. 10 per hour.

(c) First Officer Rs. 7 per hour.

Efficiency Bonus:

(a) First Officer—Rs. 75 p.m.

(b) Jr. Captain—Rs. 100 p.m.

(c) Captain—Rs. 150 p.m.

(d) Sr. Captain—Rs. 200 p.m.

Check Pilot's Allowance:

(a) Rs. 75 per month for Check Pilot.

(b) Rs. 100 per month for Chief Check Pilot.

Instructor's Allowance:

Pilot Instructor Rs. 100 p.m.

Resettlement Allowance:

A sum equal to 30 days' daily allowance plus 10 per cent. of the basic salary."

80. Sri Y. Kumar contended that the grievances of the pilots and the radio officers were as follows:—

(1) That the starting salary of pilots on 1st January 1955 should have been fixed in accordance with the principles contained in para. 79 at page 33 of the Services Committee Report.

(2) That the nature of duties attached to the last substantive post of the incumbent in the former airlines company should have been taken into consideration.

(3) That in laying down the terms and conditions of service, the rules of the particular company in which the incumbent was serving should have been taken into consideration and in this connection he referred to Ex. P-2 which contains particulars about Captains Fernandez and Chakravarti. He admitted that Captain Fernandez had been put in the right grade, but his salary was wrongly fixed because instead of 6 years, he had put in 9 years 11 months of service and he ought to have been given benefit of 3 additional years of service. He then referred to the case of Sri Chakravarti who had put in only 6 years of service.

(4) That the pilots who were on the rolls of the Corporation on 1st August 1953 should, after undergoing training that was given to them by the Corporation to entitle them to fly the aircrafts of the Corporation, have been given the Junior Captain's grade of Rs. 800—50—1,050. He stated that if the Corporation contended that a pilot of a former airlines company could not be said to be a pilot on the rolls of the Corporation because he did not hold the requisite qualification, then he relied upon section 20 of the Air Corporations Act and contended that the status of the pilot cannot be changed.

(5) Dealing with the case of the radio officers, he cited the case of Sri A. V. K. Murti and contended that the number of years he had put in the last substantive post held by him in the former airlines company, mainly that of a Chief Radio Officer, was not taken into consideration while categorising him. He had worked in the Daccan Airways as Chief Radio Officer for 9 years. Sri Murti was given grade 14, but having regard to the nature of duties performed by him in the previous airlines company, it was contended, that he should have been given a higher start in this very grade. From Ex. P-6, it will be seen that his emoluments as on 1st January 1955 were fixed at Rs. 940 per month.

(6) The employees of the Daccan Airways stationed at Hyderabad who were being paid their emoluments in Osmania Currency should have been paid the same amount of pay in the Indian Currency.

Sri Y. Kumar claimed that there should be a review of categorisation of all the aggrieved pilots and the radio officers who had preferred appeals. He stated that there were two possible alternatives for such a review—(1) the emoluments may be changed, and (2) the type of work and the status may also be changed. He suggested that where it involved increase in emoluments, the same may be paid to the persons concerned with all arrears, but if there was no vacancy at present so as to give him higher type of work or status, he might wait till a vacancy occurred and at the next vacancy he should be given that type of work and status without loss of seniority. He made it clear that the pilots and the radio officers did not want any new recruits to be degraded or their services terminated.

81. Sri Y. N. Verma, Secretary of the Corporation who was intimately associated with the categorisation of the pilots stated that the categorisation was first done on the principles contained in Ex. 14. The pilots were not satisfied with that and then there was the agreement (Ex. P-1) with

the intervention of Hon'ble Minister for Communications. The principles for categorisation of pilots, according to Sri Verma, were:—

(1) those having 2 years' service and 2500 hours of flight were classed as Junior Captains and put in grade 14;

(2) those with 4 years' service and 4500 hours of flight were classed as Captains and put in grade 15 and

(3) those with 6 years' service and 7000 hours of flight were classed as Senior Captains and put in grade 16, having the scale of Rs. 1,250—60—1,550.

The conditions in regard to grade 14 and 15 are mentioned in Ex. 14, but in regard to grade 16, the conditions are not mentioned therein. Sri Verma stated that actually the conditions above stated in regard to grade 16 were followed. He said that these principles were followed after thorough consideration of all the factors by a Committee consisting of Justice Puranik, the Chairman, Sri L. C. Jain, Director General of Civil Aviation and he himself. Sri Verma states that when the agreement, Ex. P-1, was arrived at, this basis of classification was not challenged by the pilots and so there was no mention of it in Ex. P-1. He explained that as Captain Fernandez had less than 7,000 hours of flight, he was categorised in grade 15 and the same was the case with Captain Chakravarti. Subsequently in April, 1955, owing to difficulty in obtaining the qualified personnel, there was a relaxation for appointment to the post of Senior Captain and the Corporation laid down a condition of six years of service and 4500 command hours. Formerly there was no condition of command hours. It was only flight hours. After this relaxation in April, 1955, Captain Fernandez was promoted to grade 16, but the Corporation decided to give effect to this from 1st January 1955. In the case of Captain Chakravarti, the Corporation allowed him to go to the Senior Captain's grade with effect from 1st May 1955 and the seniority between Captain Fernandez and Chakravarti is being maintained althrough. Sri Verma stated that there should be no grievance by Captain Fernandez and Chakravarti because the relaxation was made for administrative reasons and this relaxation benefited them. As regards Captain Mazumdar, whose case was also referred by Sri Y. Kumar, Sri Verma stated that he started as a pilot in May, 1953, and worked as a co-pilot upto June 1953. In July 1953, he ceased to be a pilot, because he did not possess the endorsement on his licence. In December, 1954, he got an endorsement on Dakota and was appointed as a co-pilot. From 1st August 1953 to 31st December 1954, he was working in the Operations Department of the Corporation doing some ground job, but was not working as a pilot. In the case of Sri Gangu, at present Captain, Sri Verma stated that he was working till December, 1952 in the Airways India Ltd. as a mechanic and his services were transferred from the Operations Department as a First Officer in January, 1953 on a total salary of Rs. 250. As he did not have Dakota endorsement on 1st January 1955, he was given a fixed salary of Rs. 400 and was categorised as a Second Officer, "trainee". He obtained his Dakota endorsement in July, 1955 and from that date, he was categorised as co-pilot and was given grade 13A, having the scale of Rs. 550—40—750. In regard to Sri A. V. K. Murthi, he stated that he is at present Dy. Superintendent, Communications and holds administrative charge of arranging the duties and rosters of radio officers. It was pointed out that according to the Service Committee Report, there were only 2 grades for radio officers—11A and 12B. But as a departure from the Services Committee recommendation and as a concession to the Radio

Officers, the Corporation created a selection grade for the radio officers, *i.e.*, grade 14 and those who had 9 years' service were considered eligible for this selection grade. Mr. Murthi completed 9 years of service as a radio officer on 1st August 1954 and so was given grade 14 from that date. Grade 14 is the highest grade for the radio officers.

82. Sri Murthi's case does not fall within the purview of this Tribunal as he draws salary above Rs. 500 per month and performs supervisory functions in regard to radio personnel. He is not a workman. He is Dy. Superintendent Communications. Sri Y. Kumar referred to the admission of the Corporation that the radio officers are "workmen". That admission was in regard to the radio officers and not for Superintendent or Dy. Superintendent of Communications. The explanation given by Sri Y. N. Verma in regard to the categorisation of the pilots and the radio officers satisfies me that all possible care was taken to meet their just demands in respect of their categorisation. When para. 79 of the Services Committee Report is referred to by the pilots and radio officers, para. 83 thereof which contemplates the giving of a choice to an employee either of accepting the terms offered or seeking employment elsewhere should also be read. No case of any drop in emoluments as compared with those received in the ex-airlines companies was pointed out to me so far as the pilots and the radio officers are concerned.

83. Section 20 of the Air Corporation Act does not help the employees, as it empowers the Corporation to alter the terms and conditions of employment. I hold that there is no justification for the review of the categorisation of pilots and the radio officers.

84. All the salient points contended by the parties under this demand have been dealt with above. It remains to record findings on the various clauses of this demand. They are as follows:—

Clause (a).—In view of the order passed as regards the individual appeals, Sri Buch stated that he did not contend on behalf of the employees that the individual appeals as regards categorisation should be dealt with by this Tribunal. The demand of the employees that the new pay scales should be rectified "in terms of appeals submitted by the aggrieved employees" is unsustainable from every point of view. It means that all the appeals filed by the employees should be allowed. The grievances of the employees can be rectified only to the extent indicated above in the course of discussion of this demand. The second point urged by the employees in this clause is that their appeals should not be disposed off *ex-parte*. It is nowhere a procedure that in service matters there should be a regular hearing of the parties as in courts by the employers. Of course, the employees are at liberty to put their points of view in detail in their appeals, and the employers, after considering them, should dispose them off. In the present case the employees put their points of view and the Corporation then passed orders. Those orders can be amended only to the extent as indicated in the discussion of this demand. Then it is claimed that the procedure for the disposal of the appeals should have been decided by the Corporation in consultation with the union and not *ex-parte*. The procedure for the redress of the grievances of an employee is now well established. The points of view of the aggrieved employee should be given due consideration and then order has to be passed. The last contention in this clause is that "the principles on which the original categorisation of the employees was done including those on which the anomalies arising out of improper categorisation were rectified should be scrutinized, while disposing off the appeals, in the light of the

general memorandum submitted by the union." On the 16th November, 1957, Sri Buch stated on behalf of the employees that the union did not want to lay down new principles and that it would be satisfied if the principles laid down by the Corporation had been correctly and uniformly applied. The employees' grievance now is that the Corporation did not apply correctly the principles which it laid down itself and so a large number of anomalies have occurred. In view of this statement, this contention of the employees falls to ground.

Clause (*b*).—In the first part of the demand in this clause it is claimed that "an employee should be given benefit of the number of completed years of service which he had rendered in discharging duties and responsibilities more or less equal to or corresponding to those of the new posts or grades in which he is placed." The Corporation contends that it has followed this principle. This part of the demand is allowed only to the extent indicated in the discussion of this demand. Secondly, it is claimed in this clause that "after salaries are adjusted in the new scales, no employee will be staggered and he will continue to get future annual increments in the graded scale, or in the inter-linked grade as the case may be." Sri Buch was asked as to what he meant by "staggering" of employees. He answered by giving the following illustration:—

> "Suppose an employee was getting in the ex-airlines Co. Rs. 400 and the Corporation has fixed his basic salary at Rs. 380 and personal pay at Rs. 20 so that he may not get less than what he was getting in the ex-airlines company, the Corporation does not award annual increment to the employees who are in receipt of personal pay. The annual increments are absorbed in the personal pay and only after the personel pay has been completely absorbed, he is allowed to receive increment. The union wants that over and above the personal pay, the employee should earn the annual increments in the same manner as he would have earned if there was no nationalization".

Sri Vimadlal, on behalf of the Corporation, pointed out that there were certain integrating companies in which annual increment had been stopped for 4 or 5 years *e.g.* the Air India Ltd. It is usual thing in Government departments to stagger the emoluments in the manner in which the Corporation has done. The whole idea behind this method is that an employee should not get less than what he was receiving from his former employers, so far as possible, and that the personal pay given to him to achieve this purpose may be gradually absorbed in the annual increment and he may thus be fitted in the grade prescribed by the new employer. This is what took place when the insurance business was taken over by the Life Insurance Corporation. Recently the Employment Exchanges which were formerly under the Government of India have been handed over to the State Governments and the latter has followed the same principles in fitting in the employees in the Employment Exchanges into the new grades prescribed by the State Government. There is no force in this demand.

Clause (*c*).—Clarifying the demand contained in this clause, Sri Buch gave the following illustration:—

> "Supposed an employee who has been categorised in grade 3 which is interlinked with grade 4 appeals for categorisation in a higher grade, then pending final decision on his appeal, he should be allowed to go from grade 3 to grade 4 which are interlinked according to the agreements."

The Corporation says that it has done so. No instance was pointed out by the Employees' Union to show that this was not done.

Clause (*d*).—Clarifying the demand in this clause, Sri Buch stated that by the word 'promotion' mentioned in this clause, the promotion from one set of interlined grade to another was meant and not the annual promotions. Further he clarified that by the word 'appointment' occurring therein, direct recruitment was meant. The points raised in this clause are dealt with in para. 65 to 68 *supra*.

Clause (*e*).—The point raised in this clause was in the mind of the Services Committee as will be evident from paragraphs 79 to 83 of their report quoted in para. 47 *supra*. Sri Y. N. Verma, Secretary of the Corporation stated that out of about 7,000 employees of the ex-airlines companies, only 30 suffered a drop in emoluments. The Corporation has thus followed this point of view and the emoluments can be changed only to the extent indicated in the discussion above under this demand.

DEMAND NO. 3—TRANSPORT FACILITIES

85. The demand is as follows:—

"(a) Whether the provision in respect of free transport to employees in lieu of transport allowance in Calcutta and in Palam be continued. The existing facilities of providing free transport facilities from Safdarjung Airport to Palam and back in addition to the transport allowance and the transport facilities at Bombay should remain as before.

(b) Whether entitlement to transport allowance should be as at present and *pro-rata* deduction for a part or fraction of the month in respect of this allowance shall not be made, except there expressly provided under the Union Management agreement. All arrears should be paid without delay."

In para. 13 of Ex. U-38, which are the minutes of the meeting between the Corporation and the representative of the Employees' Union held on the 13th January, 1955, the following discussion is recorded:—

"The Rule proposed by the Corporation lays down that an employee working at an airport would get transport allowance at specified rates provided he resides at a distance of more than 3 miles from the airport and was not provided with a free transport by the Corporation. The Association suggested that an employee should be provided with free transport generally or be compensated at the rate of Rs. 10 p.m. in the lower grades. The Chairman said that there was no intention of withdrawing the existing facilities in the matter of free transport though some re-distribution might be necessary. He also pointed out that till the Corporation was in a position to provide transport commensurate with requirements, there would be no alternative but to compensate the worker for the same and that the rate must differ from place to place in view of the varying transport conditions. The Chairman also said that in cases in which an employee had to perform a part of the journey at his own expense and part of it at the expense of the Corporation, the allowance would still continue to be admissible. In view of this the point was not pressed."

On the 8th April, 1955, the Service Rules were gazetted and rules 22 and 23 of it (Ex. U-48) which deal with the topic of Transport (Conveyance) Allowance run as follows:—

"22. An employee working at an airport may be granted a Transport (Conveyance) Allowance at the rates given below subject to the condition that he resides at a distance exceeding 3 miles from the airport and is not provided with free transport by the Corporation:—

	Rs.
Grades 1 to 6	10 per mensem
Grades 7, 8 and 9	25 per mensem
Grades 10, 11 and 12	40 per mensem
Grades 13 and 14	50 per mensem
Grades 15 and 16	75 per mensem
Grades 17 and above	1,000 per mensem

23. Payment of this allowance to employees in Grade 10 and above shall be subject to the further condition that a transport is actually maintained and is certified to be essential for the efficient performance of duty."

In item 5 of the first agreement it was provided that "the provision in respect of transport allowance as at present will be continued as hitherto applied." In item 7 of the second agreement, the following provision was made in regard to transport allowance:—

"(a) The employees at Nagpur and Bangalore shall be eligible for Transport allowance in full even though the Corporation may provide transport between the rallying points in the city and the airport concerned. This takes effect from 1st January 1955.

(b) The duty roster shall be so arranged that an employee reporting in the city and discharging duty at an airport or *vice-versa* is not put in such a position that one-way transport is provided by the Corporation and the other way transport has to be arranged by the employee himself. In the case of an employee where one-way transport is arranged by the employee and the other way transport is provided by the Corporation and such a feature extends for a period of not less than fifteen days in a month, the employee shall be entitled to half the Transport allowance only. This takes effect from 1st January 1955."

In the revised Service Rules for the general employees (Ex. 7), paras. 30 to 32 deal with the transport allowance and they run as follows:—

"30. *Transport Allowance.*—An employee in grade 1 to 14 shall be eligible for the grant of transport allowance at the rates given below:—

	Rs.
Grades 1 to 6	10 p.m.
Grades 7, 8 and 9	25 p.m.
Grades 10, 11 and 12	40 p.m.
Grades 13 and 14	50 p.m.

31. The grant of the Transport Allowance shall be subject to the following conditions:—

(i) The employee works at an airport and is not provided with free transport by the Corporation.

(ii) The employee resides at a distance exceeding 3 miles from the airport.

Note.—Employees who work at the airport at Nagpur and Bangalore and who are allowed to travel free of charge in the Corporation transport between the rallying points in the city and the airport concerned, will also be paid the Transport Allowance as laid down in Rule 30.

*32. An employee, for whom the Corporation provides one-way transport and the other way transport is arranged by the employee himself and such a feature extends for a period of not less than 15 days in a month, shall be entitled to Transport Allowance at half the rates mentioned in Rule 30 provided he is otherwise eligible for the grant of the allowance.

*This Rule takes effect from 1st January, 1956."

In para. 8 of the Supplementary instructions issued in connection with the rules, Ex. 7, the following is provided—

"(i) Until further orders the Transport Allowance shall be paid to an employee without insisting on the 3 miles condition mentioned in Rule 31(ii).

(ii) As far as possible, the duty roster shall be so arranged that an employee reporting in the city and discharging duty at an Airport or *vice-versa*, is not put in such a position that one way transport is provided by the Corporation and for other way transport has to be arranged by the employee himself."

Similar are the provisions in the Service Rules for the Aircraft Engineering Department, Ex. 9.

86. The Corporation in its written statement says that clause (a) of this demand as put forward by the union falls into the following three parts:—

"(i) In Calcutta, the Corporation should continue to provide transport in lieu of transport allowance for certain staff who work at the airport.

(ii) In Delhi, certain staff whose place of work is Palam should continue to be provided transport by the Corporation for their journeys from Safdarjung to Palam Airport and back. This is in addition to their transport allowance.

(iii) In Bombay, certain staff travel by suburban trains from their residence to Santa Cruz/Kurla railways stations. Such staff are provided transport by the Corporation to the Airport and back and the employees pay for the same at subsidized rates. These employees are also paid the transport allowance. The Union's demand is that the existing arrangement should be continued."

It contends that under the rules regarding entitlement to transport allowance as laid down in the General Employees' Service Rules and the Engineering Service Rules, the employees are not entitled to be provided with Corporation's transport in lieu of transport allowance. For sometime, Corporation's transport, instead of transport allowance, was

provided because of inadequate public transport facilities. This arrangement was not to last indefinitely. As the employees already are paid a transport allowance and as public transport is available, there is no justification for this demand. In this connection it relies upon paras. 47 to 50 of the Services Committee Report and the 2 agreements. It says that significantly enough there is no mention whatsoever in the two agreements regarding provision of transport by the Corporation. It contends that during the period when transport was provided by the Corporation for the employees working at airport at Calcutta, considerable loss of man-hours resulted due to transport delays. Since the withdrawal of the transport facility, the loss of man-hours due to transport delays has been completely eliminated. The argument on behalf of the Corporation is that transport allowance is given to the employees for the purpose of meeting the transport costs. For sometime the employees had been provided with transport from Safdarjung to Palam and back, but it was never intended to make it a part of service conditions of the employees. It contends that there is no justification for giving this special facility in the way of transport to employees working at Palam airport in addition to their transport allowance.

87. In the course of the proceedings, Sri Buch stated that for Calcutta, his claim was confined to about 50 employees only belonging to the Motor Transport and Traffic Sections. In Delhi, he stated, that the demand was in respect of only those employees who had to report at Safdarjung and then had to go to Palam. At present they are provided free transport from Safdarjung to Palam and they wanted the continuance of the present system. In regard to Bombay, he stated that his demand was confined only to such of the employees as came to Kurla and Santa Cruz by Suburban railways and who at present are being provided with subsidised transport from the two railway stations to the airport. He wanted the continuance of the present facility.

88. A letter from the Director of Transportation, Calcutta (Ex. 66) shows that the public transport facilities in Calcutta have much improved of late. The withdrawal of transport facilities there has led to the reduction in the loss of man-hours. The two agreement provide only for transport allowance and not for transport facilities. The discussion in Ex. U-38 in this subject were prior to the two agreements. I hold that so far as Calcutta is concerned there is no justification for the demand.

89. So far as Delhi is concerned, it is indeed very hard that persons working at Palam have to report firstly at Safdarjung and then to go from there to Palam. The distance between the two places is quite long. Sri Rajindra Singh, Chief Personnel Officer of the Corporation stated that in view of the fact that new types of aircrafts have been introduced by the Corporation, he proposed to require a large number of staff to report at Palam instead of at Safdarjung and the Corporation would provide transport facilities to them because Palam was not well served by transport. He added that if the Corporation provided transport facilities, it should not be required to give transport allowance also. The Corporation thought of introducing this arrangement immediately, but in view of the pendency of this case it did not do so. This is a reasonable offer and I direct that the Corporation shall give effect to it within one month from the date of enforcement of this award.

90. In regard to Bombay, Sri Rajindra Singh stated that the auditors objected that there was no sanction for the payment of transport allowance and provision for subsidised transport facilities both. He added that in

the ex-airlines companies the staff used to get subsidised transport facilities and not transport allowance, whereas after the nationalization they are getting both. The Corporation proposes to continue the transport allowance there and also the transport facilities with this difference only that it will raise the amount which the employees pay from the Kurla and Santa Cruz railway stations to the airport so that the loss of the Corporation may be reduced. It was stated that at present the Corporation is losing about Rs. 60,000 per annum in Bombay for the provision of this transport facility. The change will reduce the loss to about Rs. 15,000 only. The proposed contribution by the employees may be raised so as to reduce the loss to the Corporation by about Rs. 30,000 only. It would be hard upon the employees if their contribution is raised to such an extent that the loss is reduced to Rs. 15,000 only. With this modification, the offer made by the Corporation is accepted and I direct accordingly.

91. As regards clause (b) of this demand, Sri Buch referred to rule 36 of the General Employees Service Rules (Ex. 7), and contended that this has been wrongly interpreted by the Corporation so as not to allow the transport allowance to employees proceeding on leave for less than 30 days. Sri B. D. Saxena on behalf of the Corporation stated that this was not correct and in fact transport allowance was granted to an employee on leave up to 30 days even though the leave may be for less than 30 days. He contended that if the leave was for more than 30 days, an employee was granted transport allowance for the first 30 days. Sri Buch stated that he was satisfied with this interpretation. He cited, however, 4 instances in Ex. U-234 where transport allowance was denied to employees on leave. At a later stage, he stated that instances 2 to 4 were incorrect and union did not press their cases. He, however, pressed the case of Sri I. D'souza. Sri Rajindra Singh stated that Sri I. D'souza was paid in 1956 and showed the receipt to Sri Buch. Sri Buch was satisfied at this.

DEMAND NO. 4—OFFICIATING ALLOWANCE

92. This demand is as follows:—

> "Whether, in case when employees have officiated in higher posts but certain technical formalities were not fulfilled by the sectional/departmental head concerned they should be paid officiating allowance."

In the Services Committee Report this subject is dealt with in para. 51 at page 22. In the first agreement it was provided that an employee officiating in a higher post for a period of 30 days and more will be granted a charge pay at the rates prevailing in the Central Government. In the second agreement this was elaborated further and the provision at item No. 2 was as follows:—

> "(a) An employee who acts in a post, irrespective of the grade, for a period of 30 days or more, shall be entitled to an Officiating Allowance.
>
> (b) For the purposes of this allowance, an employee shall be deemed to have qualified for the officiating allowance if he has actually worked, in addition to his own duties, in a higher or equivalent grade/post, irrespective of his own grade, on being authorised as such in writing, by the departmental head."

The provision was accordingly made in rule 16 of the Service Rules (Ex. 7).

93. It will be seen that an order in writing of the head of the department is necessary to entitle an employee to the officiating allowance. It was complained on behalf of the employees that at the out stations sometimes in emergency, an employee has to take charge of higher post before the receipt of the orders in writing. Sometimes they are verbally asked to discharge the duties of higher office and it would be regarded as an act of insubordination if an employee asks for order in writing before assuming charge. Sri Samtani stated on behalf of the engineers that there are cases in which the station incharge gave the order in writing to an engineer of grade 11 to work for an engineer in grade 14 and even so no allowance was granted to him, because the station incharge was not the head of department. Exts. U-250, U-329 and U-330 were filed to give the instances of persons who, according to the union, were wrongly denied officiating allowance.

94. Sri Rajindra Singh on behalf of the Corporation stated that letters were written to the Area Managers to report about the hard cases and only 3 instances were reported to the Corporation and the Secretary was looking into these cases. These cases are not of those included in the Union's list Ex. U-250. The three cases were of Sarvasri Shome, Junior Office Assistant, A. K. Roy, Traffic Assistant, Lilawari and A. K. Bose, Traffic Officer, Calcutta. Referring to Ex. U-250, he admitted the case of Sri D. R. Gurusinghi of Colombo as being entitled to officiating allowance. Cases of Sarvasri S. M. Taqi, and T. K. R. Bhadran were being looked into by the Corporation. In the case of others mentioned in Ex. U-250, the investigations made by the Corporation show that they were not entitled to any officiating allowance. Sri G. S. Barot, driver did not work in addition to his duties in place of Sri Lunare and, therefore, he was not entitled to any officiating allowance. It was contended that there was no question of Sri Barot's doing work in addition to his own duties, as one man could not drive two cars. In regard to Sri S. M. Gracious, it was stated that the workload of the person for whom he is said to have worked was distributed among the rest of the staff and the question of any officiating allowance did not arise. As regards Sri D'souza, it was stated that when Sri Chacko proceeded on leave, his work was too distributed among the rest of the staff.

95. Sri Y. N. Verma, Secretary of the Corporation stated "if an officer-incharge of a department has made any commitment in the past regarding some officiating arrangement, the Corporation shall honour that. This relates to the past cases. For the future, the Corporation will issue detailed instructions and see that in each case when the person proceeds on leave, it should be definitely stated by the competent authority whether the person officiated or not. By 'competent authority', I mean the departmental head in the area concerned. Where it is a sub-base station, *e.g.*, Madras, the Chief Pilot is the station incharge. His orders will be sufficient and in case of very superior grades, he will obtain orders from the area headquarters. At Hyderabad where the engineer is the head of the station, his order will be sufficient."

96. Dealing with the cases of Sarvasri Narasinha Rao and Ramdas mentioned in Ex. U-329 and U-330 respectively, Sri Verma stated that there should not be difference of opinion between the two officers of

the same department and he would look into their cases and sanction payment of officiating allowance.

97. The whole difference has arisen because of the words "head of the department" in rule 16 of Ex. 7. On the 21st September, 1957, Sri Verma on behalf of the Corporation clarified that these words meant "head of the department in the area concerned". Sri Buch suggested that station heads of the various stations may be given an authority to make officiating arrangement. Sri Verma stated that at smaller places very junior persons of grade 5 are station heads and it may not be possible to authorise them all to make officiating arrangements, but the Corporation will examine the whole question of delegation of powers in regard to making of officiating arrangements so as to remove the grievance of the employees in the matter of officiating allowance. The undertakings given on behalf of the Corporation are just and fair. I accept them and direct accordingly.

DEMAND NO. 5—DUTY ALLOWANCE

AND

DEMAND NO. 11—WORKING HOURS

98. These two demands are inter-connected and they may be taken up together. They run as follows:—

Demand No. 5:

"Whether non-technical staff working in the stores department and in other Departments and offices of the Engineering Department such as store cleaners, progress clerks and progress peon, etc., should be paid this allowance with retrospective effect."

Demand No. 11:

"Whether the following demands in respect of working hours are justifiable and what directions are necessary in this respect?

(a) Working hours for the employees shall be either 38 hours per week including half an hour's break on all working days except Saturday, or 44 hours per week including half an hour's break on all working days, except Saturday. Hours of work shall correspond to the classified list marked "AI" and annexed hereto.

(b) Working hours within the spread over limit or otherwise shall not be staggered except in consultation and with agreement with the Union.

(c) Working hours and shift system for Engineering Maintenance Section shall not be adversely affected and shall continue as before as at Bombay or in Calcutta, and any change in the system, shall proceed joint consultation and agreement with the Union."

99. Sri Buch referred to Ex. U-173 which is an order issued by the Corporation classifying employees who have to work for 38 hours per

week and those who have to work for 44 hours per week. His demands under these two issues are as follows:—

(i) Such of the employees as have been marked in Ex. U-173 and bracketed in ink should be required to work for 38 hours instead of 44 hours per week and they should be given the duty allowance if they are called upon to work for 44 hours. He pointed out that such of the staff as have to do technical work are required to work for 44 hours but the non-technical staff should be required to do only 38 hours. In this connection he referred to Ex. U-105 in which the duty allowance was claimed but was not paid.

(ii) Such members of the staff as Sri Buch claimed, should be required to work only for 38 hours per week should be paid duty allowance with effect from the 1st January, 1955. In addition there are some members of the staff who according to the Corporation had to work only for 38 hours per week yet they were not paid the duty allowance according to the rules. They should be so paid.

As regards clause (b) of this demand, Sri V. K. Narendra, President of the Union stated that at some stations an employee has to come twice or on a larger number of occasions to the station for work. The union wanted that their hours of work should be fixed in consultation with the union. In regard to clause (c) he stated that the union wanted the continuance of the present system of working and no change should be introduced without the consultation of the union.

100. In the first agreement it was provided that 7½ per cent. of the basic pay will be paid as duty allowance to electrical and administrative staff who are required to work 44 hours in the engineering shifts including stores. In the second agreement at item 33, the provisions in regarding to working hours were as follows:—

"(a) Normal working hours for all employees shall be either 38 hours per week including half an hour's break on all working days except Saturday or 44 hours per week including half an hour's break on all working days except Saturday (for non-shift employees).

(b) Personnel working in administrative and other offices attached to any department and observing normal office hours, say from 10 A.M. to 5 P.M. on all week days except Saturday which is a half day shall observe 38 hours work a week including half an hour's break on all days except Saturdays. All other personnel liable to work in shifts and/or workshops will observe 44 hours in a week inclusive of half an hour break on working days except Saturdays. In the light of the above the employees will be classified and the list prepared by the Union examined.

(c) Chowkidars, Durwans, Guards, Drivers, Traffic staff (shift employees) shall have 44 hours per week including half an hour's break on all working days except Saturdays as their normal working hours.

(d) This takes effect from 1st January, 1955."

Provision in regard to duty allowance was made accordingly in rule 46 of Ex. 7. Sri Buch referred to Exts. U-105, U-108, U-164, U-166, U-167, U-171, U-172, U-173 and U-235 and claimed that duty allowance should be paid where the duty hours as prescribed by the Corporation themselves were 38 hours per week but were required to work for 44 hours.

101. Sri Rajindra Singh, Chief Personnel Officer of the Corporation stated that from the lists and documents filed by the union it appeared that certain members of the clerical and administrative staff of the engineering and stores departments who according to rules should have worked only for 38 hours per week had been required to work for 44 hours. He gave an undertaking on behalf of the Corporation to pay duty allowance in respect of such members of the staff. He added that the clerical and administrative staff attached to the workshop have, according to rules, to work for 38 hours per week, but as they would be working for 44 hours per week, for which provision had been made in the rules, they would be paid duty allowance. As regards stenographers and peons and other classes of workers, they would not be required to work for more than 38 hours per week. Referring to Ex. U-105, he stated that the persons mentioned therein would be paid duty allowance for the past. He further stated that if a member of the clerical and administrative staff of the Engineering Department was required to work for 44 hours per week, then he would be paid duty allowance according to para. 7 of the first agreement. The progress clerks, stores staff, peons attached to the engineering department were admitted by the Corporation to be the members of the engineering department. It was further admitted by Sri Rajindra Singh that in order to enable a person for duty allowance, it was not necessary that he should be working inside a workshop and that he would be paid duty allowance so long as he was connected with the engineering shift. There are shifts for the clerical staff of the engineering department. He admitted that normal shift is also a shift. He added that as costing clerks and accounts clerks of the engineering department have to work only for 38 hours per week and if they are called upon to work for more than 38 hours per week in the engineering shift, then they are entitled to duty allowance. As regards the telephone operator, it was contended by Sri Rajindra Singh that his hours of work are 44 per week because he works in shifts and is not a member of clerical or administrative staff. Sri Buch referred to Ex. U-173 in which telephone operator has been put under the heading of administration and personnel branch. It will be seen, however, that the hours of work against him are 44. Sri Buch claimed 38 hours of work per week for time office staff, dressers, compounders and nurses also. Sri B. D. Saxena on behalf of the Corporation stated that the hours of work for time keeper should be 44 because they go alongwith the shift. He relied upon para. 33(b) of the second agreement in this connection.

102. The list attached with the second agreement shows that time office staff and telephone operators, dispensary staff, teleprinter operators have been put under the column of 38 hours. The agreement must be given effect to and I hold that their hours of work are 38 per week.

103. My findings on these two demands are as follows:—

The hours of work for the employees shall be as provided in the second agreement. If an employee in the Engineering shift including stores, according to that agreement, has to work for 38 hours per week, but on any day or days has been required to work for 44 hours, then

he shall be paid duty allowance according to item 7 of the first agreement. The arrears should be cleared off within three months of the enforcement of this award, if not already done. The second agreement became affective from 1st January, 1955 and this should be kept in view in the calculation of the arrears. I have compared the list annexed with the order of reference. There is some variation between it and the list as annexed with the second agreement. I follow the agreement.

104. Section 9A of the Industrial Disputes Act, 1947 provides that "no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change:—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within 21 days of giving such notice."

Item No. 4 in the Fourth Schedule is "hours of work and rest intervals." The Corporation should follow this section. It provides adequately for consultation with the union. The claim of the employees that no change in working or in the shift system should be made except in agreement with them is one which cannot be allowed. To allow it would be to permit the union to dictate its terms to the Corporation. That is certainly unreasonable. The spirit between the employers and the employees should be one of mutual co-operation and an effort to see each others' points of view.

DEMAND NO. 6—SHIFT ALLOWANCE

105. This demand is as follows:—

"(a) Whether any employee upto grade No. 12 who has worked nights shifts should be paid this allowance with retrospective effect.

(b) Whether absence of a employee who worked on alternate night shift should be debited to his leave account for the actual number of nights not reported. That is where shift allowance is paid for the number of night shifts worked, his absence should be debited to the extent he does not attend night shift *pro-rata*."

In the Services Committee Report the discussion about shift allowance is in para. 72 at pages 29 to 31. In the first agreement it was provided that "1⅛ of the pay will be paid as shift allowance to employees working in the night shift." In item No. 1 of the second agreement the provision for this allowance was as follows:—

"(a) All employees upto grade 12 who are liable to shift working and who are required to work a night shift will be paid ⅛th of the individual wages as Night Shift Allowance.

(b) All arrears of payment should be made as early as possible.

(c) Night Shift means a shift commencing not earlier than 6-30 P.M. and finishing not later than 8-00 A.M. and shall also include a shift which extends beyond 11-30 P.M. or commences not later than 3-00 A.M.

(d) For the purposes of this allowance the term 'wages' shall have the same meaning as the term 'wages' under the Overtime Rules mentioned in para. 14(b) and (c) below.

(e) This takes effect from 1st January, 1955."

Rules 53, 54 and 55 provide as follows for the night shift allowance:—

"53. *Night Shift Allowance.*—An employee in grades 1 to 9, 10, 11 and 12 who is liable to shift working and who is required to work a Night Shift, shall be paid one-eighth of his wages as Night Shift Allowance.

54. For the purposes of Night Shift Allowance, 'wages' shall mean and include the pay and allowances enumerated below Rule 38.

55. A Night Shift shall mean a shift commencing not earlier than 6-30 P.M. and finishing not later than 8-00 A.M. A shift which extends beyond 11-30 P.M. or a shift which commences not later 3-00 A.M. shall also be treated as a Night Shift."

In its written statement, the Employees' Union claimed that many employees had not been paid their shift allowance. On the other hand, the Corporation in its statement of claims contended that the employees have been paid this allowance with retrospective effect in accordance with the rules based on the two agreements. When these demands were being clarified, Sri Buch on the 21st September, 1957, in regard to clause (a) of this demand stated that the employees had received the shift allowance and only the point of dispute was about the quantum. He admitted that the shift allowance which was paid after the promulgation of the Service Rules had been correctly paid but prior to their promulgation, the allowance was calculated not according to the definition of 'wages' as contained in rule 38. For that period the shift allowance was paid only on the basis of basic wages and dearness allowance and other allowances were excluded. The demand under clause (a) thus narrowed down to this that the shift allowance paid prior to the promulgation of the Service Rules should be reviewed and if anything extra was due to the workers, the same might be paid.

106. As regards clause (b) of this demand, Sri Lobo, Secretary of the Employees' Union stated that it related to only Calcutta workers in regard to the past. The shift has been changed there now in consultation with the union. The system in the past was that if a night shift worker absented himself on any night then he was debited with 2 days leave for one day's absence. He admitted that according to the system prevailing in the past a night shift worker was on duty for 11½ hours. He wanted that only one day's leave should be debited for absence on one night shift. In the course of the arguments on the 23rd November, 1957, Sri Buch referred to Exts. U-103 and U-236 and stated that the catering staff working at Calcutta in the night shift and peons working in the night shift at Palam were not paid shift allowance. They were told that they were not night shift workers. Sri Rajindra Singh stated that he had received report from Bombay base that the persons mentioned in Ex. U-103 had since been paid the shift allowance. As regards 4 persons mentioned in Ex. U-236, he stated that the 3 drivers have been paid the shift allowance for July and that the payment of August and September would be shortly made. The case of Sri A. P. Jayashekar was under investigation and the Area Manager had been asked to expedite the case. As regards the arrears of the shift allowance, he stated that the Accounts Officer, Delhi had reported that the payments were correctly made in the past. From Calcutta, information had been received that all departments, except Motor Transport and one other, were paid correctly. So far as these two departments are concerned, arrangements for payment were being made. From Bombay, the Corporation had received the information that they were looking into the matter.

The Corporation is hereby directed to complete the investigations and to pay the shift allowance to all concerned according to rules 53 to 55 within two months from the date of enforcement of this award, if not already done.

107. As regards clause (b) of this demand, Sri Buch stated that in view of the discussion at the first hearing, it did not survive. This disposes off this demand.

DEMAND NO. 7—MEAL/LUNCH ALLOWANCE

108. The demand is:—

"Whether, all cases where this allowance has not been paid including cases represented by the Union payment should be made forthwith and all pending claims settled."

In the first agreement, the provision for this allowance is as follows, in item No. 9:—

"Employees who are assigned duties of such a nature at any time, that they are unable to take normal mean facilities at home or at base or at office including those who are called to work on 'off' days, will be provided with meals or in the alternative actual expenses incurred will be reimbursed."

In the second agreement the provision is as follows in item No. 11:—

"(a) If an employee is put on duty which takes him away from his normal place of work during the course of his duties and consequently is unable to have his meals at home or in the Canteen, he is entitled to Meal Allowance in accordance with the provisions of Financial memo No. Fin/Rules/26/18943, dated the 19th August, 1955 as amended by circular memo No. Fin/Rules/26/19882, dated the 2nd September, 1955 irrespective of the fact that he is entitled to over-time, Shift allowance or duty allowance.

(b) Employees attending to normal working hours from Monday to Saturday and who are entitled to 'off' on Sunday and who are called to work on that day, *i.e.*, on Sunday, due to exigencies of work shall be paid Meal Allowance in accordance with the provisions of Financial Rules irrespective of the fact that the employee is entitled to overtime allowance, shift allowance and duty allowance. Pending bills will be scrutinised and settled on the above basis.

(c) This takes effect from 1st January 1955."

In the Service Rules provision was made according to agreement in rules 39 to 42. The limit of allowance for the various meals was also fixed therein. At the hearing of the case, the employees complained that the chowkidars, motor drivers, store purchase clerks, loaders, clerks and technical personnel called on Sunday had not received their meal allowance. They claimed meal allowance for them and for none else. They produced Ex. U-174 which is a bill for meal allowance submitted by Sri Lakshman Detkar, Chowkidar but it was returned to him without assigning any reason as to why this allowance was not payable to him. The representative for the Corporation stated that it was ready to pay meal allowance if it was due under the rules. Sri Buch referred to Exts. U-101, U-130 to U-133, U-175, U-199 and U-237.

109. The agreement was that if an employee is put on duty which takes him away from his *normal place of work* during the course of his duty and consequently is unable to take meal at home or canteen, then he would be paid meal allowance. The first question which arises in this connection is what is the normal place of work for drivers and chowkidars. On behalf of the employees it was urged that for chowkidars, the normal place of work is where they report themselves. As regards drivers, it was stated that during the meal hours if he is on duty, then he should be paid this allowance. The very nature of duties of driver takes him from place to place. His normal place of work is a moving place. It is the steering seat in the car which is his normal place of work I hold that the driver is not entitled to the meal allowance by reason of the fact that he is in the car during the meal hours. Everyone knows that in the interval between two trips the driver remains waiting in the car. They usually bring their lunch with themselves and they take it when the car is not in motion. As regards chowkidars, it was contended on behalf of the Corporation that his place of work is the place where he is deputed to keep watch. As in the case of police constables or postmen rosters are sometimes fixed, for chowkidars also, they have to report at the office, but they are deputed at different places for keeping watch, sometimes in the office itself, sometimes at the residence of the Area Manager or any other officer in the interest of security. I hold that they are not entitled to meal allowance simply because they have to keep watch at a place different from where they have to report themselves.

110. Dealing with the case of Sri B. M. Singh, cleaner in Ex. U-199, Sri Buch stated that he worked at another place for 2½ hours and that although his bill for meal allowance was passed by the Chief Engineer, it was not sanctioned by the Area Manager. Sri Rajindra Singh stated on behalf of the Corporation that he had received report from the Area Manager that Sri B. M. Singh was not entitled to the meal allowance, but in view of the remarks of the Chief Engineer, he undertook to look into his case again and to make payment if due. Sri Buch added that Sri B. M. Singh was called to work on Sunday and under the rules he was entitled to this allowance.

111. Sri Buch referred to pages 10—33 of Ex. U-237 which contains the list of cleaners who claim meal allowance and admitted that Sri M. C. Bhattacharya, accounts clerk mentioned in this exhibit was partly paid meal allowance for February, 1957.

112. On the last date of hearing, Sri Rajindra Singh admitted the claim of the 5 persons mentioned at pages 10—33 of Ex. U-237 and stated that they have been paid the meal allowance.

113. A list of persons in the costing section of Hyderabad who according to Sri Buch had been called upon to work on Sunday was also handed in to Sri Rajindra Singh. Sri Rajindra Singh undertook to examine all these cases and to make payments if due according to the rules. I direct that the cases of all the persons claiming the meal allowance shall be looked into by the Corporation within three months from the date of the enforcement of this award and the payment of the dues be made to them. In examining these cases, the interpretation given above in regard to drivers and chowkidars will be kept in view.

DEMAND NO. 8—OVERTIME PAYMENT

114. This demand is as follows:—

"(a) Whether arrears of overtime payment should be settled immediately and whether it should be the responsibility of the Corporation to regularise technical formalities and whether in no circumstances pending claims be rejected owing to technical irregularities for which the employees concerned were not responsible.

(b) Whether in computing overtime, time spent on flight duty in the case of ground staff should be taken into account for overtime payment and all pending claims or cases of non-calculation in the manner indicated above should be settled."

Item No. 14 of the first agreement provides as follows:—

"Employees observing 44 hours week will be paid overtime at double the rate of wages for any work done beyond the daily scheduled hours of work."

Item No. 14 of the second agreement provides as follows:—

"(a) All employees, irrespective of their Departments, who observe 44 hours week whether governed by Factories Act or not, when required to work overtime beyond their daily scheduled hours of work shall be paid overtime at double the ordinary rates of wages for any work done beyond the daily scheduled hours of work.

(b) 'Wages' for the purposes of overtime shall in the case of employees governed by Factories Act mean and include the following:—

Basic pay, Personal pay, Dearness allowance, Place allowance, Transport allowance, Machine allowance, House Rent allowance, Washing allowance, Licence allowance and Duty allowance.

(c) 'Wages' for the purposes of overtime shall in the case of employees not governed by Factories Act mean and include the following:—

Basic pay, Personal pay and Dearness allowance.

(d) The provisions of overtime mentioned above shall apply to all employees in grades 1 to 12 who observe 44 hours week.

(e) For the purpose of determining the amount of overtime, the hourly rates of wages shall be calculated as follows:—

$$\text{Rate per hour} = \frac{\text{Monthly 'Wages'}}{25 \times 8}$$

(f) Clauses (a), (b), (c) and (d) above take effect from 1st January, 1955 and clause (e) takes effect from 1st January, 1955."

Service Rules 37 and 38, Ex. 7, are in accordance with these terms of the two agreements.

115. It will be seen from the two agreements and the Service Rules that the overtime allowance is payable to an employee whose hours of work are 44 per week including daily break for half an hour and when he is required to work beyond his normal daily scheduled hours. The

claim for payment of overtime allowance cannot obviously be made unless the employee establishes that he was required to work beyond his daily scheduled hours of work. As regards the technical formalities mentioned in clause (a) of this demand, Sri Buch invited attention to Ex. U-176 which he said was sent by M.T. Officer, I.A.C., Delhi. It was claimed that the employees mentioned in this document were entitled to overtime allowance for the period noted against the name of each. It was further claimed that despite the fact that the head of the section had certified the overtime put in by these employees, they were not paid overtime allowance. He added that formerly engineering staff at Calcutta, Bombay and Hyderabad used to work 46½ hours per week. This period of work was subsequently reduced to 44 hours with retrospective effect from 1st January, 1955, yet none of these employees was paid overtime allowance due under the rules. In regard to the period from 1st January, 1956, the grievance was only that there were outstanding arrears. The third point in this connection put forward on behalf of the employees was that as chowkidars and drivers were not allowed any interval for taking meal, they should be compensated by the award of overtime allowance for half an hour every day which other employees got as lunch interval. Lastly it was contended that as the Service Rules were promulgated in July 1956 although with retrospective effect from 1st January, 1955, there was a mistake in the calculation of overtime allowance as formerly overtime allowance was granted on the basis of basic pay, dearness allowance and personal pay and no other allowance. He wanted that all the cases prior to the promulgation of the Service Rules may be reviewed and arrears of overtime should be paid. Motor drivers in Bombay had formerly 48 hours work per week. Now it has been reduced to 44 hours per week with retrospective effect from 1st January, 1955. He claimed overtime allowance for the motor drivers at the rate of 4 hours per week for the past. For the staff at Gauhati, it was stated that though a certificate was issued by the station in-charge yet the overtime allowance was not paid.

116. In regard to clause (b) of this demand it was stated by the Employees' Union that sometimes accident occurs which requires the ground staff to be taken to another place. It was complained that the Corporation did not reckon the time taken by ground staff in the flight as duty performed. Sri Buch made it clear that it was not the employees' case that the time spent in journey by rail or by any other means of transport should be counted for purposes of overtime allowance. He confined his claim only in regard to time spent in flight.

117. Sri B. D. Saxena on behalf of the Corporation stated that the ground staff when it had to go by air to another place in the discharge of their duties, are entitled to daily allowance even though the absence from the normal place of work may be for less than 24 hours. Sri Saxena stated that in the case of journey by rail the daily allowance is not admissible if the journey is less than 24 hours but in the case of journey by air it is permissible. I hold that there is no force in clause (b) of this demand.

118. At the time of the argument, Sri Rajindra Singh stated that in Delhi and Calcutta, payment for overtime in accordance with clauses (b) and (c) of item No. 14 of the second agreement had already been made. He added that the Area Manager concerned had reported that no case of violation of rules on the subject of overtime allowance existed. In Bombay the cases were under examination and the payments were promised to be made soon. In regard to the persons mentioned in Ex. U-176,

the Corporation admitted the amounts claimed therein and promised to make the payment shortly.

119. Sri Buch referred also to the list, Ex. U-238 in which a large number of employees are mentioned as having been denied the overtime allowance. On the last date of hearing Sri Rajindra Singh stated that payment of overtime allowance had already been made to 213 of the employees mentioned in this list and that the payment would be made to the rest by the end of January, 1958. The drivers mentioned in Ex. U-238 at pages 11(b)-6 have been paid their overtime allowance from 1st January, 1955 to 15th April, 1956. As regards demand from 15th April, 1956, it was under scrutiny. In regard to the employees at pages 11(b)-10 to 11(b)-14, he said that the payment had already been made.

120. Regarding the staff of the Canteen Department in Ex. U-238, Sri Lobo was unable to explain why a break of one hour was claimed when in the agreement there was a provision for a break of only half an hour. Sri Rajindra Singh stated that he had received report from Bombay that the canteen staff was being allowed a break and that they were not entitled to any overtime allowance on that account.

121. As regards the workers at Nagpur mentioned at page 11(b)-15 of Ex. U-238, Sri Rajindra Singh stated that the matter was under enquiry. He added that the workmen in the maintenance department at Bombay did not work overtime. Sri Buch clarified that the overtime for these workers was being claimed not for excess hours put in but as the basis of calculation of overtime allowance was wrong.

122. As regards the case of Sri Radhakrishna of Bangalore mentioned at page 11(b)-16 of Ex. U-238 Sri Rajindra Singh stated that it was settled in April, 1957. In regard to the Madras employees mentioned at page 11(b)-17 of Ex. U-238, he stated that Ramanand worked for 45 minutes extra per week when he was posted at Hyderabad from 1st January, 1955 to 6th November, 1955 and the payment will be shortly made. In the case of Sri Anantaraman, he stated that the payment had been authorised on the 12th November, 1957. As regards Sri Shriniwasu, he said that he did not work overtime on 24th August, 1957, but he did work overtime for 2 hours 16 minutes on 19th June 1957 for which payment had already been made. On the last date of hearing he stated that Shri P. S. Padmanabham was paid his overtime allowance on 1st January, 1958.

123. Dealing with the case of Bombay station staff mentioned at page 11(a)-1 of Ex. U-238, Sri Rajindra Singh stated that Shri Dhirendra Nath Bose was paid overtime allowance on 19th June, 1957. The claim of Sri H. S. Mani was denied as he wanted overtime allowance when he was on privilege leave. The case of Sri A. B. Khedkar is under investigation. The claim of Sri K. S. Kulasingham was for 80 hours' overtime but it had been accepted for 52 hours only and the payment was made with his salary for September, 1957. The claim of Sri U. D. Kambadkome was denied.

124. Sri Buch referred to Ex. U-109 which is a letter, dated the 13th June, 1956 from the Regional Secretary, Calcutta to the Chief Accounts Officer there claiming overtime allowance for the engineering staff at Dum Dum. Sri B. D. Saxena on behalf of the Corporation stated that the Corporation was willing to pay overtime for the half hour break which according to the latest rule should be counted as work after making adjustment for the additional ten minutes tea break enjoyed by the

employees for whatever period they did. He added that for sometime the employees at Dum Dum had two breaks—one for 10 minutes for tea and the other for half an hour for meals. Sri Buch stated that if the Corporation paid overtime allowance for 20 minutes per day for the period beginning from 1st January, 1955 and ending with 15th July, 1955, the union's demand contained in Ex. U-109 would be satisfied. The union, however, did not accept the interpretation of Sri B. D. Saxena that for future the tea break will be deducted because they had issued a circular that 44 hours per week included 10 minutes break for tea. Sri B. D. Saxena admitted that the Corporation did issue the circular but that was before the agreement. The break can be allowed only according to the agreement. Any circular issued prior to the agreement and inconsistent with it has no force.

125. Sri Buch stated that the catering staff at Dum Dum worked for 56 hours per week but they were not paid overtime allowance. No instances were cited, yet Sri Rajindra Singh undertook to look into the matter.

126. Sri Buch then referred to Ex. U-123 which is a letter from the Regional Secretary, Calcutta to the Area Manager there in which overtime allowance under section 59 of the Factories Act was claimed for workers in the maintenance department at Dum Dum. It appears that there was an agreement between the workers at Calcutta and the Corporation in regard to the hours of work according to which they were put on alternate night shifts for two consecutive months after every month of work, on the day and mid-day shift. In the night shift they had to work for a spread over of $11\frac{1}{2}$ hours with two half hour's breaks. The following claim was put forward by the Regional Secretary in this letter:—

> "On a rough calculation the dues to each worker on this account will amount to $22 \times \frac{3}{4} \times 15 \times 1\frac{1}{2}$ hours' wages at double the ordinary rate for 22 months of operations of the above system of duty roster inasmuch as for every 3 months the workers are 2 months on night shifts and work for half an hour extra in every 2 consecutive calendar days. This comes to 660 hours 'wages' in aggregate for each of about 330 workers in the deptt."

In Ex U-124 the Area Manager replied that the revised terms in the maintenance department had been introduced from 29th April, 1955 with the consent of all the parties and that it had not been contended by anyone earlier that the revised timings did or could attract extra payment. In Ex. U-125 the Regional Secretary reiterated the claim. In Ex. U-126 which is a letter dated the 8th May, 1957 from the Area Manager to the Regional Secretary, the interpretation put by the employees on Section 59 of the Factories Act was not accepted.

127. The point for determination is whether under section 59 of the Factories Act overtime allowance is payable. Section 51 provides that no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week. It had not been shown that according to the agreement arrived at between the Corporation and the workers at Calcutta, they had to work for more than 48 hours in any week. Section 54 provides that no adult worker shall be required or allowed to work in a factory for more than 9 hours in any day. The word "day" is defined in Section 2(e) to mean "a period of 24 hours beginning at mid-night". It was argued on behalf of the Corporation that the spread

over of hours of work in the night shift was such that on no single "day" as defined in section 2(e) did a worker work for more than 9 hours. The definition of the word "day", however, is modified for night shift workers under section 57(b) of the Factories Act. It provides that where a worker in a factory works in a shift which extends beyond mid-night, then the "hours he has worked after mid-night shall be counted in the previous day." According to this provision it must be held that night shift workers work for 11½ hours in the same day. Section 56 provides that the period of work of an adult worker in a factory shall be so arranged that inclusive of his interval for rest under section 55 shall not spread over for more than 10½ hours in any day. The Chief Inspector has been given power to increase the spread over to 12 hours. It has not been shown to me that the Chief Inspector has done so in the case of these workers, nor has it been shown to me that the State Government has made any rule providing for the exemption of these workers from the provisions of sections 51, 52, 54, 55 and 56 of the Factories Act, or that any exempting orders have been passed under section 65. I hold, therefore, that having regard to section 56 of the Factories Act, there was an overtime work to the extent of one hour in every night in which the workers worked the shift. They are, therefore, entitled to overtime allowance for this period of overtime work. There can be no contract contrary to the provisions of a statute. The agreement arrived at providing for 11½ hours for night shift cannot, therefore, deprive the workers of the overtime allowance admissible under section 59.

128. Ex. U-127 which is a letter dated the 23rd April, 1957 from the Area Manager, Calcutta to the Regional Secretary in regard to the payment of overtime allowance to the security staff, drivers and loaders was referred to on behalf of the employees. The union claims that half an hour's break was not allowed to this staff and so they should be paid overtime allowance for this. In this letter the Area Manager said that this staff was availing of the break as and when they liked and in majority of cases for much longer periods than half an hour. He added that there was no regularity in the observance of this half an hour's break during a particular period in the day. Hence the need was felt to regularise it and in 1956 the break period to be observed was laid down. In the case of the security staff it was stated that they partook their meal on duty posts as and when they liked and for drivers it was mentioned that they observed their rest intervals any time during their idle hours and the time was far more than the prescribed period of half an hour. It was not established by the employees that the case as put forward by the Area Manager was wrong. I hold that no overtime allowance is admissible to the security staff, drivers and loaders whose case is referred to in Ex. U-127.

129. Sri Buch complained that the clerks whose hours of work were 38 per week were not given any overtime allowance if they were asked to work beyond the prescribed hours. He admitted that the demand of clerical staff for overtime allowance did not arise out of the agreement and that it was a new demand. It was stated on behalf of the Corporation that the clerks were not usually called upon to work for more than the prescribed hours. It is well known that occasions do arise when owing to pressure of work clerks are called upon to work for more than the prescribed hours. This point was raised in the Banks Disputes cases and is discussed in paras. 188 to 190 of the Labour Appellate Tribunal's decision in that case. The directions made by the Sastry Tribunal was that for the first half hour of overtime work, there should be no overtime allowance and that for every completed 15 minutes' work thereafter, the workmen shall be paid at 1½ times of his emoluments. There

was a provision that for overtime work for every quarter of an hour beyond the first 4 quarters of an hour after the initial half an hour cushioning payment will be made at 1½ times of the emoluments as aforesaid together with additional 20 per cent. for work during such extra period. For reasons given in paras. 189 and 190 the Labour Appellate Tribunal upheld this order of the Sastry Tribunal. I agree with the decision taken by the Labour Appellate Tribunal and hold that the clerical staff of the Corporation shall be paid overtime allowance accordingly.

DEMAND NO. 9—WASHING ALLOWANCE

130. This demand is as follows:—

"Whether washing allowance including arrears thereof should be paid to all employees upto grade 9, besides stewards and hostesses who are entitled to uniforms not withstanding the fact that the Corporation neither renewed nor made fresh initial issues?"

Para. 54 at page 25 of the Services Committee Report deals with this allowance. In item No. 15 of the first agreement the provision is as follows:—

"Rs. 3 per month will be paid as washing allowance to employees upto grade 9 who are issued with uniforms. Flight Stewards and Air Hostesses will also be paid this allowance."

Provision was made accordingly in rule 49 of the Service Rules.

131. At the first hearing of the case Sri Buch elaborated this demand saying that the former airlines companies issued uniform to their employees according to their own rules and before the framing of the rules by the Corporation, they continued to use the uniform issued by the former companies. Prior to 1st January 1955, the Corporation even renewed these uniforms. It was in 1956 that the Corporation issued the list of the employees who were to be supplied with uniforms. In this they withdrew the uniforms from certain employees who were supplied the uniforms by the former companies. He said that the employees wanted that such of them as had been using the uniforms supplied by the former companies or by the Corporation should be given the washing allowance. There is no dispute as regards the quantum of washing allowance. He filed Exts. U-178 and U-179 to prove that the Corporation issued uniforms and the employees made representation about washing allowance. He argued that even if under the new rules an employee was not entitled to uniform, but had been issued one by the Corporation, then according to the agreement he was entitled to the washing allowance. He referred to Ex. U-239 containing the names of some of the employees who according to him were entitled to washing allowance in Bombay and Madras area. Page 2 of this exhibit contains the names of certain cashiers. He stated that these persons were originally paid washing allowance but later the same was deducted from their salary. Referring to Ex. U-178, he stated that it shows that Sri B. G. Upadhyaya was issued a Khaki overcoat by the Corporation, nevertheless he was denied the washing allowance. His name appears at no. 23 in Ex. U-239. Ex. U-179 is a representation by 40 workmen of Stores Deptt. of Santacruz for this allowance. Sri Buch made it clear that the claim for the arrears of the washing allowance is not only for the staff of stores department at Bombay, but of other areas also.

132. Sri B. D. Saxena on behalf of the Corporation stated that the Service Rules about the uniforms were issued not in 1956 but in April, 1955. He referred also to rules 28 and 60 at pages 479 and 484 of the Gazette of India, dated April 8, 1955 (Ex. U-48). These rules are, according to Sri Saxena, no longer in force and have been superseded by new rules according to which employees upto grade 9 are entitled to this allowance. He contended, however, that during the period for which the arrears of washing allowance is claimed, the rules published in the Gazette were in force. Dealing with the uniform issued prior to 1st January, 1955, Sri B. D. Saxena contended that it was an act of grace by the Corporation to have allowed a person to use the uniform and the additional cost of washing allowance should not be imposed upon the Corporation. As regards the uniforms issued after 1st January, 1955, Sri Rajindra Singh undertook on behalf of the Corporation that if the uniform was issued to any employee between grade 1 and 9 after 1st January, 1955 and he had not been paid the washing allowance, he would be paid the same till such time when the declaration was made by the Corporation in regard to the categories of employees who were to be supplied with uniform. In regard to Ex. U-239 Sri Rajindra Singh stated that of the 29 storekeepers, mentioned in this exhibit, 27 were not supplied with any uniform. Shri B. G. Upadyaya and Sri Theo Fernandez were, however, according to him, given overcoat and overall each *ex-gratia* a month or two before 1st January, 1955. Sri Rajindra Singh did not remember whether according to existing rules, storekeepers were entitled to any uniform. In regard to cashiers he stated that there was no provision for washing allowance in the rules of the ex-airlines companies.

133. Sri Buch stated in reply that the declaration about uniform was made in September, 1956. He made it clear that the arrears of washing allowance were being claimed in respect of the uniform isued by the Corporation after 1st August, 1953 and these arrears related only for the period commencing from 1st January, 1955 and not to any period prior to that. Upon this Sri Vimadlal on behalf of the Corporation made the following statement:—

> "The Corporation is willing to pay the washing allowance in respect of uniforms issued by it upto March, 1955 when the Corporation prescribed the rules and in regard to the employees of enumerated categories entitled to the same. The period of such washing allowance, of course, will be from 1st January, 1955. The Corporation, however, urges that there should be no washing allowance after March, 1955 except as provided in its new rules. Even according to the agreement which has been referred to, reading item 15 along with item 26 thereof and taking along with the fact that settlement came into force from 1st January, 1955 the above contention will be justified."

Sri Buch stated that the rules were printed in the Gazette in April, 1955 and then the powers to prescribe uniform came to the Corporation. He added that it was impossible that those powers could be exercised before the publication of the rules in the Gazette. Sri Anand Prakash on behalf of the Corporation raised the point that the demand no. 9 as framed was confined only to those classes of employees who were entitled to uniforms but no fresh issue was made and that being so, the claim advanced by the employees in the form in which it had been presented at the hearing was not maintainable. He added that instructions had

been issued by the Corporation to pay washing allowance to such of the employees as were entitled to uniforms, but had not been issued uniforms. Sri Buch contended that the claim as advanced fell within the terms of reference.

134. The demand is in respect of washing allowance. My interpretation is that it covers both those employees who were issued uniforms by the Corporation and also those who were using uniforms issued by the ex-airlines companies, although the same was not renewed by the Corporation. As will be seen from para. 54 of the Services Committee Report, almost all the ex-airlines companies paid washing allowance to certain classes of staff in the lower grades who were given uniforms. The argument that the staff save wear and tear of their own cloth and so the claim for additional benefit of washing allowance was unjustified, was repelled by the Committee and it recommended that a sum of Rs. 3 per month may be granted as washing allowance to all the staff between grades 1 and 6 who were supplied uniforms by the Corporation. By the first agreement the scope of employees entitled to this allowance was extended to those upto grade 9. When the employees' counsel, Sri Buch made it clear that the arrears of washing allowance were claimed only for such uniforms which were issued by the Corporation after 1st August, 1953 and were confined to the period commencing from 1st January, 1955, there is no reason to extend that demand. According to item 15 of the first agreement and rule 49 of the Service Rules, this claim of Sri Buch must be allowed and I direct accordingly. The arrears, if any, due by the application of the above principle shall be paid by the Corporation within 2 months of the enforcement of this award.

DEMAND NO. 10—OVERTIME ALLOWANCE

(FLYING CREW)

135. This demand is as follows:—

> "Whether overtime done during the probationery period when the flight is undertaken as the necessary part of the crew, should be paid with retrospective effect and all outstanding payment should be settled without any delay?"

Sri Buch made it clear that by the words "flying crew" he meant only air hostesses and stewards. At the time of argument, he stated that except in the case of Miss Parekh, air hostess, he claimed this allowance for none else. Sri Rajindra Singh stated that on enquiry it was found that no overtime allowance had been withheld from any air hostesses. He promised, however to enquire into the case of Miss Parekh and to pay the overtime allowance, if due, in due course. This undertaking disposes off this demand.

DEMAND NO. 12—COMPENSATION

136. This demand runs as follows:—

"Whether compensation should be granted as follows and what directions are necessary in this respect?:—

(a) In the event of death or total or partial disablement resulting from duty on air journey the Corporation should pay compensation at the rates which would be uniform for all categories *i.e.* in prescribing rates there should be parity for the

flying as well as ground staff. Such rates should be finalised in consultation and agreement with the Union concerned.

(b) Employees on ground duty and covered by any compensation scheme should be adequately covered against ground risks. For example staff working in the Cash Department including security staff attached to it or in the Engineering workshop need appropriate coverage. Rules in this regard should be prescribed in agreement with the Union concerned."

So far as clause (b) of this demand is concerned, it is reasonably met by the Corporation by giving the following undertaking:—

"The Corporation undertakes to take out insurance policies for cashiers and security staff accompanying cashiers, accountant deputed to accompany the cashiers carrying cash and employees of the traffic department who may have occasions to handle gold bars in transit on land on the scales as provided in the Workmen's Compensation Act."

The scale of compensation provided by the Air India International is not applicable because it is a paying concern.

137. As regards clause (a) of this demand, reference may be made to para. 150 of the Services Committee Report, rule 159 of the Service Rules for Flying Crew (Ex. 8), Rules 159 and 160 of the Aircraft Engineering Service Rules (Ex. 9) and rule 159 of the General Employees Service Rules (Ex. 7). In the first agreement it was provided in item no. 22 that disparity in the rates of compensation for employees other than flying crew, on air journey will be re-examined for improvement. In the second agreement, there is no provision about this. There can be no parity between the flying crew and the ground staff. Disparity in the rate of compensation is justified because *inter alia,* flying crew by the very nature of their duties are exposed to more risk than the ground staff. Workers in the engineering department are covered by the Workmen's Compensation Act. The Services Committee also made a distinction between the flying personnel and other personnel. The claim of parity in the rate of compensation for the flying crew as well as the ground staff is not justified and I hold accordingly.

DEMAND NO. 13—SICK LEAVE

138. This demand is as follows:—

"Whether the following demands are justified and what directions are necessary in respect of the same?:—

(a) All employees should be entitled to sick leave which would accrue to them from the date of joining.

(b) Sick leave account of each employee, after adjustment of absence owing to sickness, in cases if any, should be brought upto date. In case where such leave has been wrongfully denied, the employees concerned should be credited with sick leave to the extent due.

(c) In cases where any employee desires to commute his privilege leave against absence owing to sickness, the same should be permissible."

Sri Buch stated that in view of the rule 154 of the Service Rules, he did not press clause (c) of this demand. It, therefore, requires no discussion.

139. As regards clauses (a) and (b), it appears that they refer to the casual and daily rated employees. The complaint was that they were not given the sick leave. It was claimed that they should be granted sick leave in the same manner as the temporary employees. In the first agreement the provision in item no. 23 was that "all employees will be entitled to sick leave. Sick leave will accrue from the date of joining". In the second agreement the provision in this respect in item no. 21 was as follows:—

"(b) Temporary employees on completion of one year's service shall be eligible to all the benefits to which the permanent employees are entitled.

(c) While determining the standard force, the presence in the employment of the Corporation of the temporary employees as also the casual and daily rated employees shall be taken into account.

(d) Casual and daily rated employees who have completed one year's continuous service shall be considered for absorption in the service of the Corporation against the standard force and shall, with effect from 1st January, 1956, be eligible for the same benefits as are admissible to temporary employees."

In the service rules (Ex. 7), rule 3 provides that "the rules apply to all employees in the whole time employment (whether permanent or temporary)". The terms "employee", "permanent employee" and "temporary employee" are defined in clauses (4), (11) and (12) of Rule 6. In the supplementary instructions, issued by the Corporation, on these rules, the very first paragraph shows that these rules do not apply to part time or daily rated staff who would be governed by special terms of appointment in each case. Sri Vimadlal referred to the case of Associated Cement Co. reported in 1957 LLJ, page 591 and argued that the daily rated and casual workers were always treated differently from those who are permanent or temporary. He relied upon the agreement. Interpreting clause (d) of item no. 21 of the second agreement, Sri B. D. Saxena said that if a person is employed as casual worker on 1st January, 1956 and continuously works for whole of 1956, then for that year he would not be given any sick leave, but if he continues in 1957, the sick leave would begin to accrue with effect from 1st January, 1957. The employees wanted that such an employee should be given sick leave for 1956 also. The casual worker is one who performs work of a casual nature *i.e.* if a large consignment arrives and the boxes have to be opened, then an additional carpenter has to be employed for this purpose. His employment would be of casual nature. A daily rated worker was explained by the Corporation as one who is employed on daily wages for work of not a permanent nature *e.g.* if owing to court work some additional typists have to be employed for 2 or 3 months, then they would be paid on daily wage system. He said that sometimes it so happened that one type of casual work is finished, but the same man is required in another section for work of casual nature and so his employment continues for a year or more.

140. Sri Buch contended that clause (b) read, with clause (d) of item no. 21 of the second agreement meant that if a casual or daily rated employee completes one year's continuous service, then he becomes

entitled to sick leave in the same manner as a temporary employee even for the one year which he has already put in. He admitted that if an employee, recruited on casual or daily rate system is off from the rolls of the Corporation before he completes one year then he would not be entitled to any sick leave. It was argued by him that neither in the standing orders nor in the Service Rules, a daily rated worker is contemplated. He contended that an employee could be only temporary or permanent. A daily rated worker was really a temporary worker, the only difference being in the mode of payment.

141. Sri Buch filed a list of employees (Ex. U-232) who had been denied sick leave. Sri Rajindra Singh undertook on behalf of the Corporation that if the persons mentioned therein had completed one year's service and were denied leave for which they applied after the completion of one year's service, they would be credited with the leave which began to accrue to them on the completion of one year's service. He undertook to take necessary steps to see that no leave was denied to daily rated and casual workers who had completed one year's continuous service. He wanted to make it clear that the leave would begin to accrue on the completion of one year's continuous service.

142. My interpretation of clauses (b) and (d) of item 21 of the second agreement is that it is only "on completion of one year's continuous service" that a temporary employee becomes eligible to all the benefits admissible to permanent employees which include sick leave. Casual and daily rated employees are also really temporary employees and they too become entitled to the benefits of the permanent employees on the 'completion of one year's continuous service'. I decide accordingly. The sick leave account of the casual and daily rated workers also should be brought upto date in accordance with the interpretation of item 21 of the second agreement as given above.

DEMAND NO. 14—MEDICAL FACILITIES

143. This demand runs as follows:—

"Whether the following demands are justifiable and what directions are necessary in this respect?:—

(a) Expenditure incurred on hospitalisation in cases of employees suffering from Tuberculosis should be reimbursed.

(b) Enforcement of set off benefits under the Employees' State Insurance Scheme should not result in undue hardships to the employees. Employees injured on duty and on accident leave or on sick leave as the case may be, should be entitled to receive benefits admissible under the rules of the Corporation irrespective of the fact whether he is or is not covered by State Insurance Scheme. Set off benefits if any, should be enforced when the employee has recovered and resumed duty and in the manner beneficial to him while ensuring that such facilities do not become a source of profit to the employees.

(c) In case of employees where sickness extended during any period after 1st January, 1955 or relapsed during any period on or after 1st January, 1955, the employees concerned should be eligible to medical facilities and sick leave under the Corporation rules.

(d) In cases of female employees who have been denied maternity benefits, the claims in respect of such employees should be settled forthwith."

In the first agreement, item no. 24 provides as follows:—

"Existing medical facilities will be utilised by all employees including those covered by Health Insurance Scheme. Hospitalisation expenses for T.B. patients will be borne by the Corporation. Steps will be taken for the reservation of beds for T.B. patients. Efforts will be made by the Corporation to seek exemption from the Health Insurance Scheme."

In the second agreement, item 9(d) provides as follows:—

9(d) "The Corporation shall, on the advice of its Medical Officer and to the extent of the period of leave due and/or authorised, endeavour to provide free hospitalisation in Government Hospitals or approved sanatoria to an employee suffering from Tuberculosis. The term Hospitalisation is taken to mean all facilities provided in the particular hospital or sanatoria. The terms of hospitalisation and reservation of beds in such Institution should be studied."

144. In regard to clause (a) of this demand, at the first hearing of the case, Sri Buch gave the instance of one Sri Morey of Bombay who was not allowed certain incidental charges when he was in the hospital *e.g.* washing charges, cost of fruits, cost of special diet. He stated that in the Post and Telegraph Department such expenses were allowed. The union claimed for the employees of the Corporation. Five cases of Calcutta and two cases of Hyderabad were also mentioned. It was claimed that hospitalisation should mean not only the facilities provided in the particular hospital or sanatoria, but also those facilities which are enjoined by the medical attendant and for which the patient may have to incur expenditure.

145. Rule 169 of the Service Rules (Ex. 7) carries out item 9(d) of the second agreement. Sri Y. N. Verma undertook on behalf of the Corporation to re-imburse the fruit charges of the employees suffering from Tuberculosis provided there was proof of the fact that the amount claimed for the fruits was really incurred. Rule 169 of the Service Rules, together with the undertaking given by Sri Y. N. Verma reasonably meets employees' demand as contained in clause (a). No further direction is necessary.

146. With reference to clause (b) of this demand, Sri B. D. Saxena stated that the Employees' State Insurance Scheme was applicable only to the employees in the engineering section or in the M.T. section who were factory workers. Sri Buch stated that that the claim applied also to the members of the security staff, time office and stores department. The employees' demand under clause (b) falls in two parts—(a) in regard to leave benefit and (b) in regard to delay in the payment of compensation by the Insurance authorities. It was complained that when an employee meets an accident and proceeds on accident leave, at the end of the month he receives wages from the Corporation after deducting the benefits to which he is entitled under the Insurance Scheme though in fact the benefits are not actually received by him. According to Sri Buch it take 4 or 5 months to receive the benefits under the Insurance Scheme. Sri Vimadlal stated that the solution of this hardship was to approach the Insurance authorities to make prompt

payment and the Corporation should not be called upon to make payment which the Insurance authorities have to make. He added that if the suggestion of the employees is accepted, there was a possibility of loss to the Corporation if the employee left the service before adjustment or if he died. He pointed out that in case of emergency, the employee could take loan from the Provident Fund under rule 19(1)(i) of the Employees' Provident Fund Rules. Sri Buch referred to item 23 of the first agreement and contended that the sick leave should not be adjusted against the benefits given to a worker under the State Employees' Insurance Scheme. He claimed, however, that the employees were entitled to benefits under the rules of the Corporation in addition to those admissible under the Employees' State Insurance Scheme.

147. Section 61 of the Employees' State Insurance Act, 1948 provides that, "when a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit, admissible under the provisions of any other enactment". It was argued, however, that the sick leave on full pay in the Corporation was admissible to a worker not under any enactment, but on the basis of a contract between the employers and the employees and so section 61 was not applicable. Rule 130 of the Service Rules (Ex. 7) provides that the grant of full or half pay shall be subject to adjustment of benefits under the National Health Insurance Scheme, where applicable. The same was provided in rule 47 of the Service Rules published in the Gazette of India, dated the 8th April, 1955 (Ex. U-48). Section 46(1)(a) of the Employees' State Insurance Act, 1948 provides for a periodical payment to any insured person in case of his sickness certified by a duly appointed medical practitioner. Section 49, read with schedule II of that Act specifies the rates of the sickness benefit. I am of opinion that rule 130 of the Service Rules, Ex. 7, is reasonable and that the additional benefit claimed by the employees should not be allowed. The principle of section 61 of the Employees' State Insurance Act should be followed. If there is delay on the part of the Insurance authorities to make the payment of the sickness benefit, the employees should approach them and the Corporation should help them in this connection. Any representation made by the employees in this respect should be supported by the Corporation if the claim is reasonable and according to the Insurance Scheme. The claim of the employees that those who are injured on duty or when on accident leave or sick leave, as the case may be, should be entitled to receive benefits admissible under the rules of the Corporation irrespective of the fact whether they are or are not covered by the State Insurance Scheme, is an extravagant demand.

148. In regard to clause (c) of this demand, Sri Buch stated that certain person had become entitled to the benefits after promulgation of Service Rules in July, 1956, but they were not given those benefits for sickness prior to the promulgation of the rules. The union claimed under this clause that such benefits should be given to them. At the hearing of the case, the union promised to file a list of the instances of such cases but this was not done. The case of Sri Deshpande of Bombay was mentioned during the discussion. Sri Rajindra Singh stated on behalf of the Corporation that Sri Deshpande had made the claim of Rs. 977 on account of the medical treatment, out of which Rs. 712 were paid in November, last. The rest of the amount was disallowed because it was not permissible under the rules as it consisted of visiting charges of the doctor and the fee of the specialists. The Corporation agreed that if the illness of an employee continued after 1st January, 1955 or his illness relapsed on or after 1st January, 1955, then he would be entitled to

medical facilities, provided in the rules, with effect from 1st January, 1955. I see no force in this demand. The statement given on behalf of the Corporation and the clarification made by it should meet the reasonable demand of the employees under this head.

149. Clause (d) of this demand refers to maternity leave. An example of a lady worker, *viz.*, Srimati Nayar, a clerk in the Accounts Department at Bombay, was cited. It was stated that she was denied maternity leave during the first year of service. She was a temporary monthly rated employee. Rule 140 of the Service Rules, Ex. 7, provides that a temporary female employee is eligible for maternity leave only after the completion of one year's service. There is nothing about this in any of the two agreements. Rule 52 of the rules published in Gazette (Ex. U-48) did not deprive temporary female employees of the benefit of the maternity leave during the first year of service. The innovation made in rule 142 is not reasonable. I hold that Srimati Nayar should be granted maternity leave according to rule 52 of Ex. U-48.

DEMAND NO. 15—ACCIDENT LEAVE

150. This demand runs as follows:—

"Whether the following demands in respect of accident leave is justifiable and what directions are necessary in respect of the same?:—

(a) All pending claims arising out of accident on duty including those represented by the Union should be settled without delay.

(b) In case of employees on accident leave and who have subsequently received benefits from the State Insurance Scheme, no deductions from wages of such employees should be made, and if at all, the leave account be debited to the extent they have availed additional benefits.

(c) Accident leave should be granted when certified by the Medical Officer or Medical attendant of the Corporation as the case may be. In cases where such leave has been refused the employees concerned should be credited with the number of days of such leave refused to his earned account."

In clause (a) of this demand, the prayer is for expeditious disposal of the claims arising out of accident on duty. This is a reasonable demand and the Corporation should dispose of all the demands filed heretofore within two months of the enforcement of this award and in future it should try to dispose of such claims within a month of their falling due.

151. In clause (b) of this demand, the claim is similar to what has been discussed under demand No. 14, *viz.* that the benefits received under the State Insurance Scheme should not be deducted from the wages of the employees. For the reasons already given, I see no force in this. There is no justification for double benefit. Rule 97 of the rules framed under the Employees State Insurance Act was also relied upon by the Corporation. The Employees' Union's contention was that this rule was *ultra-vires*. I can see nothing wrong in it.

152. Clause (c) of this demand arises on account of rule 136 of the Service Rules, Ex. 7, which runs as follows:—

> "Grant of this is subject to the condition that the accident or illness is not due to the employee's negligence or default and the employee obeyed all instructions given by approved medical authority as to the treatment during the period of absence."

In principle, Sri Buch stated, the employees were not against this rule, but what they wanted was that the factor of negligence should be investigated and determined by the Corporation not on the strict rules of evidence as in a court of law. The union filed the list, Ex. U-231 to show (1) that accident leave was denied and the leave actually taken was adjusted against privilege leave and (2) that the compensation for accident was refused. The cases in this list were discussed at the hearing of the case and the Corporation pointed out that most of them were not entitled to the accident leave or any compensation because the accident or illness was due to employees' own negligence or default. The matter is dealt with at pages 252 to 256 of the proceedings. A few instances may be mentioned to indicate the points of view of the parties.

153. In regard to Sri Khandelwal, the union's point of view was that he left the hospital when he was discharged and after obtaining the medical fitness certificate. On the other hand, the Corporation contended that he left the hospital against the advice of the hospital authorities and, therefore, he was not entitled to any accident leave under rule 136. In regard to Sri Bhumick, the union claimed the conveyance allowance for attending the hospital. No rules were referred to in support of this nor is there anything on this point in the two agreements. It was stated on behalf of the Corporation that his case is still under its consideration. In regard to Sri Deeplal, the union contended that he should not have been refused leave for 90 days. Para. 142 of the Services Committee Report was relied upon. The Corporation replied that Sri Deeplal remained on leave after the accident for a period exceeding 90 days and according to the rules then in force, even the Chairman could not consider the extension of accident leave beyond 90 days. The rules authorising the Chairman to consider such cases were framed later in July, 1957. After the expiry of 90 days accident leave, he was granted 93 days more leave, a part of which was adjusted against his other leave and for the rest of the period he remained on leave without pay.

154. The demand of the employees, that the investigation in regard to the question whether the accident or illness was due to the employee's negligence or default and whether he obeyed all instructions given by the medical authorities should be properly made, is one which is just. The employee concerned or the union of which he is a member should be given an opportunity to present his point of view when the investigation is held by the officer concerned.

DEMAND NO. 16—PROBATIONERY PERIOD

155. This demand runs as follows:—

> "Whether employees who have been recruited against substantive vacancies and who have completed six months probationery period in the aggregate, notwithstanding that such period of

probation was not mentioned in the letter or appointment, should be confirmed in their post from the date such employees concerned have completed six months, and whether employees are eligible to all the benefits admissible to all the employees?"

The Employees' Union referred to para. 32 of the first agreement which provides that the probationery period for employees will be six months in aggregate. Rule 9 of the Service Rules (Ex. 7), however, provides that for employees in grades 1 to 9, the period of probation shall be six months and for those in grades 10 and above, it shall be one year. Similar is the provision in the Flying Crew Service Rules (Ex. 8) and Aircraft Engineering Department Service Rules (Ex. 9). It appears, however, from Ex. U-201 that an air hostess was put on probation for one year. Clause 3(ii)(a) of the standing orders which defines the expression "probationery period" provides that the probationery period shall be 6 months. It is also provided there that the Chairman or the Manager may, if he considers it necessary, order in writing for extension of the period of probation of any workman as a special case, provided that the total period of probation shall not exceed 12 months in the aggregate in any case. It was complained that a number of employees who were working for a year or two or three had not been confirmed.

156. At the first hearing of the case Sri B. D. Saxena on behalf of the Corporation stated that the probationery period was only to determine whether or not an employee was fit for employment in the Corporation and did not necessarily follow that on the completion of the probationery period, he was to be confirmed. Sri Buch stated that if an employee on the expiry of six months' probation period was allowed to continue in employment of the Corporation and this continuance was interpreted as tacit approval of the Corporation about his fitness to continue, then he would be satisfied with this interpretation.

157. At the time of the arguments, Sri B. D. Saxena stated that after the first hearing of the case, orders were issued to the effect that the period of probation for air hostesses also should uniformly be six months. He undertook to decide pending cases of air hostesses on that basis even though in the original order of appointment they might have been informed that their period of probation was one year.

158. The Secretary of the Corporation stated as under:—

"It takes a little time to take a decision after the expiry of the period of probation whether or not a probationer is fit to continue in the employment of the Corporation and for this purpose three months are necessary. Corporation shall try that within three months of the expiry of the period of probation, the probationer is informed whether or not he has been approved as fit to continue in the service of the Corporation. But if on the expiry of three months also he does not receive such information then he may take it that he has successfully completed the probation period, and such approval of the Corporation in regard to his fitness shall take effect from the date on which he completed six months' probation. I want to make it clear that on the expiry of the period of probation the probationer shall not be deemed to have been confirmed."

159. This offer on behalf of the Corporation is reasonable and I direct accordingly. It may be stated that Sri B. D. Saxena agreed to the proposal of Sri Buch that the instructions issued by the Corporation that probationery period of six months shall apply to air hostesses, should take effect from 1st January, 1955. I hold accordingly.

DEMAND NO. 17—STANDARD FORCE

160. This demand is as follows:—

"Whether the following demand in respect of standard force is justifiable and what directions are necessary in this respect?:—

The Corporation should provide for the definite establishment strength region-wise so as to allow leave facilities to the employees and also to provide for sickness emergencies and normal turnover. While determining standard force percentage distribution should be worked out for each class and grade of employees in consultation and agreement with the Union. Standard Force should be determined as soon as categorisation issue is finalized."

It appears that sometime in 1956, the strength of the standard force for the headquarters and the three areas was determined by the Corporation as in Exts. 21/1 to 21/4. The Employees' Union contends that the standard force worked out by the Corporation is not according to the actual workload and in proof of this, the following facts are referred to:—

(a) In the minutes of the meeting of the Liaison Committee held at Madras on the 24th May, 1951, Ex. U-202, the Area Manager admitted in para. 6 that he was aware of the shortage of the staff and promised an improvement in the position. In para. 14 he clarified that the standard force for each station shall be existing staff plus *shortage of personnel.*

(b) Owing to the shortage of staff, large overtime allowance had to be paid. It was stated on behalf of the union that at the Begumpet Airport about one hundred employees had been receiving overtime allowance of about Rs. 2,500 per month and that at places electricians had to work for months at a stretch for 12 hours a day instead of 8 hours. In Bombay only in the Traffic Department about Rs. 3,000 per month are paid as overtime allowance. In Calcutta, every Sunday the engineering staff is called for extra work.

(c) Para. 158 at page 56 of the Estimates Committee Report, Ex. U-76, is referred to wherein the Committee expressed the view that the position in regard to the staff was not satisfactory and recommended that urgent steps should be taken to reduce overtime to the minimum.

(d) It is admitted on behalf of the Corporation that the total overtime allowance paid by it in 1955-56 was over Rs. 19 lakhs.

161. The first contention raised on behalf of the Corporation is that this is not an 'industrial dispute'. The definition of 'industrial dispute' as contained in section 2(k) of the Industrial Disputes Act, 1947 will show that *inter-alia* it must be connected with employment or with

terms of employment of with the conditions of labour. Section 9A of this Act was inserted in 1956. It requires that no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change without notice to the workman concerned or within 21 days of giving such notice. Item No. 11 in the Fourth Schedule is:—

"Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not due to forced matter."

The complaint of the employees is that owing to insufficient strength of the standard force, the workload upon them is high and they are called upon to work overtime. It is alleged that due to insufficiency of staff, leave is denied and there have been cases when even resignations were refused. There can be no denying the fact that the issue of workload does fall within the definition of 'industrial dispute'. The expression "conditions of labour" does include such conditions as may offer facility to the employees to enjoy the leave earned by them according to rules. When section 9A of the Act requires employer to give notice in regard to any increase or reduction in the staff, there can be no doubt about the fact that this matter is an industrial dispute. Had it not been so, it would not have been dealt with in the Industrial Disputes Act. Sri Vimadlal referred to certain cases decided by the Industrial Tribunal or the Labour Appellate Tribunal in support of his preliminary objection regarding jurisdiction. All those cases were decided before the insertion of section 9A in 1956. Sri Vimadlal did not deny that questions of workload and facility of leave availability were industrial dispute. He contended, however, that the issue should then have been raised by the employees concerned in a different form. The union can well take up a general question like this. We should not go by the form of the demand but by its substance. Such technical objections should not be observed in industrial cases where the demands are formulated by workmen and not by trained lawyers. I see no force in the objection regarding jurisdiction raised by the Corporation.

162. Large overtime allowance was paid by the Corporation. In 1954-55, it paid over Rs. 12 lakhs and in 1955-56, it paid over Rs. 19 lakhs *vide* para. 158 of the Estimates Committee Report. Abnormal overtime work is an unhealthy feature. In paras. 98 and 99 of its report. The Central Pay Commission deprecated over overtime work. It was argued on behalf of the Corporation that the standard force was fixed in December, 1956, and the average overtime payment per month in 1956-57 was Rs. 1·6 lakhs. Even this figure is on the high side. It was stated on behalf of the workers that they do not want to work overtime at a stretch. The standard force fixed by the Corporation in December, 1956, does require a revision and I direct accordingly.

163. In the first agreement, item No. 36 provides:—

"Agreed to provide for definite establishment strength region-wise."

It was contended on behalf of the Corporation that it was carried out by it and so the demand does not survive. On the other hand the employees contended that insufficient strength has been provided for the standard force and they were never consulted in the fixation of the strength. It was pointed out that the Corporation does consult the union in many matters, but in this it was not consulted. Sri Y. N. Verma stated that it was impracticable to consult the union in the matter of

fixation of standard force. He illustrated the impracticability as follows:—

(a) The Board of Management of the Corporation recently decided that there should be a Passenger Relation Section and that should be started at a very early date. The Corporation invited Area Officers at the headquarters and in consultation with them fixed the standard of this section. If the condition of the previous consultation with the union was adopted, then there would have been delay and the decision of the Board could not have been implemented immediately.

(b) Government of India on examination of budget proposals found that the store accounts were not properly maintained and they wanted physical verification of the stores. For this purpose some organisation had to be set up immediately. If previous consultation with the union had to be made, then the Government order could not have been complied with promptly.

(c) Recently the Corporation purchased Vicounts and in that connection it recruited certain men to be trained for flying and maintenance of Vicounts. That had to be done immediately.

Sri Y. N. Verma added that various needs arise from time to time which have to be attended to without delay. The previous consultation would cause delay and retard the work of the Corporation. He stated that at the time of the second agreement, this point was discussed at length and explained to the union representatives. It was for this reason that the condition of previous consultation with the union was not attached with the fixation of the standard force. He pointed out that in certain matter previous consultation with the union was conceded to, but not in the case of fixation of standard force. He wound up by saying, "I feel on behalf of the management, very strongly, that previous consultation at the present stage of the Corporation will be impracticable. If the previous consultation was made mandatory, the working of the Corporation will be completely disorganised".

164. The Tribunal suggested that the Corporation might fix the standard force as it deemed fit and proper from time to time, but when a representation is received from the union in regard to the standard force, it may be seriously considered and if it is found to have any force, then the standard force may be revised accordingly. Sri Verma stated that he had no objection to this.

165. Sri Buch suggested the following procedure for the re-fixation of the standard force:—

The Regional Officers of the Corporation and the Regional Secretaries of the Union may sit together to consider all the relevant data and may refix the standard force. They may suggest then to the headquarters where the representatives of the department may consider the matter.

Sri Buch did not deny the final power of the Corporation to fix the standard force. All what he wanted was that the view points of the union should be seriously taken into consideration in fixing the standard force.

166. From the facts placed before me I conclude that the standard force fixed in December, 1956 does require a review. I do not want to undo what has already been done. The standard force (Exts. 21/1 to 21/4) will be the basis and on a consideration of all the relevant data modifications will be made in them where necessary. In this review the union representative must be associated as suggested by Sri Buch. At one of the earliest meetings with the union representatives held on the 16th and 17th March, 1954, the Chairman of the Corporation assured them that they would be consulted in all matters *vide* Ex. U-9. I see no valid ground in the vehement objection by the Corporation to the association of the union representatives in the review of the standard force. Having regard to the present policy of workers' participation in the management—a policy which received its approval of the Labour Tripartite Conference held at Delhi in July last—their representatives should be associated. Sri Buch made it clear that it was not the demand of the union that no appointment could be made without the consultation of the union. If emergency arises, the Corporation is at liberty to make extra appointment as it did in the illustrations given by Sri Y. N. Verma.

167. The last part of this demand is that the standard force should be determined as soon as categorisation issue is finalized. Categorisation already made shall not be interfered with except to the extent as indicated in this award. The standard force already fixed by the Corporation is not declared null and void. All what I have held is that it shall be reviewed and the points of view urged on behalf of the employees shall be given serious consideration. The review must be made in a spirit of mutual co-operation as expeditiously as possible. It was pointed out to me that in the standard force at some places, separate standards have been laid down for grades 3 and 4. As these two grades have been interlinked, so there should be one standard force for both these grades. It would be good if the review of the standard force is made after the categorisation has been finalized in accordance with the directions contained in this award.

DEMAND NO. 18—SENIORITY RULES

168. This demand is as follows:—

"Whether the following demand in respect of seniority rules is justifiable, and what direction are necessary in this respect?:—

> Seniority rules and seniority list should be finalised in accordance with agreement with the Union. The draft seniority rules and seniority list should be furnished to the Union for the purpose."

Sometimes in the middle of 1956, the Corporation issued the rules, Ex. 19, relating to recruitment, promotion and seniority of the employees. The Employees' Union sent its comments and suggestions on these rules with the memorandum Ex. U-149 on the 12th July, 1956. Later the seniority list was also issued by the Corporation and a copy of the same was supplied to the union. The union's complaint is that at the draft stage of these service rules it should have been consulted. There is, however, evidence on the record that the suggestions received from the union were considered by the Corporation. Sri Y. N. Verma showed to Sri Buch the file in which those suggestions were considered. The demand of the union that it should have been consulted at the draft stage of the seniority rules is not unreasonable. However, that stage is passed and what is done cannot be undone. Rules 4 and 5 of Ex. 19 relate to

the determination of seniority. Ex. 69 is the answer given by the Corporation to the objections raised by the Employees' Union in regard to the seniority list and service rules. Sri Buch said that owing to the peculiar nature of the case, *viz.* the determination of the seniority *inter-se* of the employees of the various ex-airlines companies, the demand of previous consultation in regard to the seniority list is only for the current final list and not to the seniority list which may be issued thereafter.

169. On the subject of seniority, in the first agreement the provision in item No. 37 is:—

> "Detailed rules will be framed in this regard. The seniority list will be made available to the union through Area Manager."

In the second agreement, the provision in item No. 22 is:—

> "The existing seniority list shall be treated as provisional and not final."

So far as these two agreements are concerned, the Corporation has carried them out. Though there is no provision in the second agreement for the previous consultation of the union in regard to seniority rules, it would have been better if the Corporation had consulted it. The claim that seniority rules shall be framed only in agreement with the union is too tall a demand. It means one party dictating another. As regards the seniority list, I do not think that previous consultation of the union was desirable. The aggrieved employees could make representation either themselves or through the union to show that there was a breach of the principles in regard to seniority evolved after due consideration of the employees' points of view.

170. In regard to this demand also, it was contended on behalf of the Corporation that it is not an "industrial dispute". Seniority is one of the matter which falls under the expression "terms of employment". The very fact that the Corporation issued the seniority rules to regulate the terms of employment of the employees is a proof of this. I hold that this objection has no force.

DEMAND NO. 19—PROMOTION RULES

171. This demand is as follows:—

> "Whether rules governing promotions shall be finalised in consultation and agreement with the union and the union should be furnished the draft promotions rules."

Ex. 19 contains the rules in regard to promotion also. Sri Buch admitted that on receipt of a copy of these rules, certain suggestions were made by the union and the promotion rules were revised. Referring to rules 20 to 22 of Ex. 19, he contended that while the usual method is to take seniority into consideration for promotion to non-selection posts and to apply the principle of rigorous selection for promotion to selection posts, the Corporation has adopted just the reverse process. I see force in this contention. Promotion from one grade or interlinked grades to another grade or interlinked grade should undoubtedly be on the basis of merit, but the principle to be observed in such promotions should be the same as has been laid down above for the crossing of efficiency bar. The principle of rigorous selection should be applied only when an occasion arises for promotion to a selection grade or post. In Government

offices also this principle is observed. I direct that rules 20 and 22 of the recruitment and promotion rules in Ex. 19 be amended by the Corporation accordingly.

172. In regard to this demand also the contention was raised on behalf of the Corporation that it is not an industrial dispute and reliance was placed *inter alia* upon the case of Assam Oil Co., Ltd., reported in the 1954 L.A.C., page 543. In that case it was held that the matter of promotion is entirely management's function and the discretion of the management in the matter of promotion, if not improperly exercised, cannot be interfered with by the Tribunal. It will be seen that it did not go so far as to say that the Tribunals have no jurisdiction in the matter of promotion. Moreover, under the present demand the matter with which we are concerned is not the promotion of any individual or individuals, but of the very principles governing promotions. This is certainly a matter falling under the expression "terms of employment" and as such within the jurisdiction of this Tribunal.

DEMAND NO. 20—RECRUITMENTS

173. This demand runs as follows:—

"Whether the following demands in respect of recruitment are justifiable and what directions are necessary in respect of the same?

(a) In sanctioned vacancies recruitment should be made from amongst the ex-employees of former airlines whose applications for employment are already with the Corporation. For this purpose the Corporation should notify to the Union all vacancies occurring, at each region so as to enable the union to direct the ex-employees accordingly.

(b) Normally recruitment should be made at the lowest cadre and posts in higher grades should be filled from amongst those already in employment.

(c) Subject to any directions that may exist governing recruitment of Scheduled Castes or Tribe, the rules of recruitment should be finalised in consulting with the Union. All vacancies shall be notified at least two weeks before the selection is made."

Clause (b) of item 29 of the second agreement provides:—

"Regarding appointments of the ex-employees of the former air companies who were discharged/dismissed the Union pointed out with particular reference to Calcutta that some of the ex-employees had already applied and their interviews were over and asked the Chairman whether such discharge or dismissal constituted any bar to recruitment of such ex-employees. The Chairman said there was no general bar on the recruitment of ex-airlines employees, but that each case would be considered on its own merits by the appointing authority and any board constituted for that purpose."

This matter has been discussed at some length in para. 45(2) *supra*, and I decide accordingly. Except in emergency, notice for filling in the vacancies should be put up on the notice board at least one week before the filling in of the vacancies. The ex-employees of the former airlines companies can apply and if they are fit, they will be selected.

The employees' Union filed a list, Ex. U-165, containing the names of five ex-employees who, they said, had been selected by the Chief Engineer, but were not given appointment. Sri Y. N. Verma looked into the cases of these persons and stated that Sri Logan, mentioned in the list was a senior mechanic and no vacancy arose in that post. A vacancy of junior mechanic arose, so he could not be appointed. As regards Sarvasri Bagchi, Chakravarti and Acharya, he stated that they were interviewed but were not selected. In regard to Sri Gangoli, he stated that he did not apply for appointment to any post.

174. The demand of the union that normally recruitment should be made at the lowest cadre and posts in higher grades should be filled from amongst those already in employment is one discussed by the Services Committee in para. 97 of its report. The Committee observed that "no enterprise can be sure of maintaining virility as well as stability unless in its higher direction and management there is a judicious blend of conservative experience with youthful vigour and receptivity to new ideas. In order to produce such a blend the service structure must provide for the intake of some fresh young blood at the intermediate and higher levels." It recommended that the Corporation should bear this principle in mind. I agree with this observation.

175. The rules of recruitment have already been made by the Corporation. The objection of the employees in regard to these rules may be considered seriously by the Corporation, if not already so done. Service Rules are always in the process of evolution and as time passes and experience of working is gained, they require amendments and such amendments are usual features in Government offices and in all well regulated concerns.

DEMAND NO. 21—PROVIDENT FUND

176. This demand runs as follows:—

"Whether the following demand in respect of Provident Fund is justifiable and what directions are necessary in this respect?

(a) Subject to any statute for the time being in force the detailed rules regarding the Provident Fund be finalized in consultation with the Union.

(b) Provisions should be made for the payment of insurance premia from the Provident fund Contributions. This premia payment will be limited to the employees' contribution.

(c) The system of paying insurance premia from the salary of the employees concerned should be continued wherever they are applicable.

(d) The members of the Board of Trustees of the Fund should include employees within the union category.

(e) Funds available in Lapsed Fund Account should be utilised for securing of suitable premises for purposes providing holiday resorts."

177. A preliminary objection has been raised by the Corporation to the effect that this is not an 'industrial dispute', and reliance has been placed upon the case of Muzaffarpore Electric Supply Co. Ltd., reported in 1957 (II), LLJ, page 542. The facts of that case are distinguishing

from those arising in this case. Muzaffarpore Electric Supply Co. Ltd., had no separate Provident Fund for their employees. Octavius Steel & Co. Ltd., had, for the benefit of the employees, in the several companies under their management provident fund known as "the Octavius Steel & Co. Ltd., E.S. and E.D. Provident Fund." Among the companies under the management of Octavius Steel & Co. Ltd., Muzaffarpore Electric Supply Co. Ltd., was one of them. The Provident Fund was vested and was under the management and control of three industries. On the other hand in the present case, the employees of the Corporation have a separate provident fund and provident fund regulations have been framed by the Corporation itself in exercise of the powers conferred upon it under section 45 of the Air Corporations Act, 1953. As the regulations have been made by the Corporation, it has power to amend them. Moreover, it does not appear that in the Muzaffarpore Electric Supply Co.'s case, the attention of the Tribunal was invited to section 7A of the Industrial Disputes Act, 1947, read with Third Schedule thereof. It will be seen from item 5 of that Schedule that provident fund is one of the subjects which are within the jurisdiction of Industrial Tribunals. All the subjects mentioned in the Third Schedule have been described in section 7A as 'industrial disputes'. In view of this amendment in the law and having regard to peculiar features of this case, I have no doubt in my mind that provident fund is an 'industrial dispute', and this Tribunal has jurisdiction to deal with this demand.

178. Section 45 of the Air Corporations Act requires the previous approval of the Central Government and notification in the official Gazette for the regulations to be made by the Corporation. Sri Vimadlal stated that the approval of the Central Government to the provident fund regulations Ex. 3, had been obtained, but they have not been published so far in the official Gazette. Non-publication in the Gazette was stated under a misconception. By the application dated 28th January, 1958, the Corporation forwarded a copy of the Gazette of India dated 15th September 1956 in which the Provident Fund Regulations made by the Corporation are published.

179. Section 45 authorises the Corporation to make regulations for the administration of the affairs of the Corporation and for carrying out its functions. In particular and without prejudice to the generality of those powers such regulations may provide for the terms and conditions of the employees. In all probabilities, these regulations have been made under section 45(2)(b) of the Air Corporations Act.

180. Regulation 3 in Ex. 3 provides for the composition for the Board of Trustees. It provides *inter alia* "two representatives of the employees to be nominated by the Chairman of the Corporation from amongst the members of the fund."

181. As regards clause (a) of this demand, Sri Rajindra Singh stated on behalf of the Corporation that when in future the provident fund rules are revised, the union shall be consulted. I decide accordingly.

182. As regards clause (b) of this demand, under regulation 19(1)(iv) in Ex. 3, withdrawal from the fund can be made to pay premia on policies of life insurance of the subscribers and of his wife, but no amount shall be withdrawn for this purpose—

(a) before the particulars of the policies are submitted to the Board of Trustees and accepted by them as suitable; or

(b) unless policy is assigned to the Trustees and the receipts granted by the Insurance Co. for the premia are from time to time handed over to Trustees for inspection of the Income Tax Officer; or

(c) in excess of the amount required to meet the premia.

This provision is reasonable and in accordance with the rules prevailing in Government offices. Sri Buch stated that the Corporation should not require the deposit of policies. When it was pointed out to him that in Government offices also policies have to be deposited, Sri Buch stated that if that was the practice in the Government Departments, the union will follow it.

183. As regards clause (c) of this demand, it was stated on behalf of the Union that the former integrating companies used to deduct premia from the salary and the same should continue. The Corporation's representative stated that such responsibility was not taken by the Government and there was no bar to the employees doing this on their own accord. The Corporation's objection is reasonable and I hold that regulation 19(1)(iv) does not require any amendment. The responsibility of paying insurance premia from the salary of the employees should not be cast upon the Corporation. It may be pointed out that in item No. 42(a) of the first agreement it is provided that the premia shall be paid only from the provident fund contribution and they will be limited to the employees' contribution. This is what the regulation 19 has done.

184. As regards clause (d), item No. 42(b) of the first agreement may be referred. It provides that the members of the Board of Trustees shall include employees within the union category. Sri Y. N. Verma gave an undertaking on behalf of the Corporation that in future, he will ask the unions of the employees to nominate 2 representatives on the Board of Trustees. This undertaking meets this part of the demand.

185. As regards clause (e) of this demand, Sri Lobo admitted that a holiday resort has been started at Mussoorie with the help of the lapsed fund account. He complained, however, that at other places no holiday home has been started. It was stated on behalf of the Corporation that efforts to start holiday resorts at other places were being made, but so far no accommodation had become available. The hope was expressed that by the next summer holiday homes will be found at other places also. This should satisfy the employees. The Corporation should expedite in the starting of the holiday homes for employees at other convenient places.

DEMAND NO. 22—GRATUITY

186. This demand is as follows:—

"Whether the following demands in respect of gratuity are justifiable and what directions are necessary in this respect ?

(a) Claims of employees for gratuity under the rules of their former air companies wherever such schemes of gratuity was in force should be admitted for payment. In case where such claims have been refused by the Corporation the same should forthwith be settled.

(b) All employees of the Corporation should be entitled to Gratuity in accordance with the terms and conditions to be separately laid down in consultation and agreement with the Union. For this purpose the gratuity should be a month's salary for every year of continuous service."

In item No. 43 of the first agreement, the provision for gratuity is as follows:—

"(a) Measures will be taken by the Corporation to realise the amount accrued to the credit of the employees from the previous employers and credit the same to the employees' account.

(b) With regard to the institution of gratuity scheme the same will be discussed with the Union at a subsequent stage."

In the second agreement, the provision in this respect in item No. 20 is as follows:—

"(a) Claims of employees for gratuity under the previous air companies Rules wherever the scheme of gratuity was in force were not conceded. The Chairman assured, however, that the question of realising the amount accruing to the individual employees' account due from the former air companies would be examined further and asked the Financial Comptroller to expedite the examination of the same.

(b) The Union reiterated their proposal for the introduction of a gratuity scheme. The Chairman pointed out that the demand had not been conceded at the time of negotiations with the Minister but that the suggestion would be examined further."

It appears that in the two ex-airlines companies, *viz.*, Air Services of India and Air India Ltd., gratuity was payable. The former had a rule to this effect providing for payment of one month's salary for every completed year of service with a maximum of 15 months' service. In the Air India Ltd., the gratuity became payable under an award. Clause (a) of this demand is in respect of the employees of these two companies only and clause (b) is for all employees of the Corporation praying for the drawing up of a scheme of gratuity for them.

187. The Corporation contended that it used its good offices in realising funds accruing in the individual employee's account from the former airlines companies. It addressed letters to each airline company asking for the list of gratuity due and for payment for the same, but none of them acceded to this. It expressed its helplessness in doing anything more and said that the union was informed about this on the 11th February, 1956 and was advised to take the matter with the ex-airlines companies direct. It wound up by saying that the demand being not against the Corporation and the Corporation having made all efforts on behalf of the employees they are not justified to press this demand on the Corporation. As regards clause (b) of this demand, the Corporation said that the Services Committee had recommended that in the present state of the Corporation's finances, the adoption of the gratuity scheme would not be feasible. As provided in the second agreement, the Chairman re-examined the matter, but as the finances of the Corporation had not materially improved, the adoption of this scheme was found not proper. It was pointed out that the employees already have retirement benefit in the form of contribution to the provident fund and it would not be justified to burden the Corporation in the present state of its finances with the additional liability in the form of gratuity.

188. Dealing with clause (a) of this demand Sri Buch argued that under section 20 of the Air Corporations Act, 1953, the employees of the 2 ex-airlines companies in which the gratuity scheme existed and who came over to the Corporation are entitled even now to the benefit of this claim. Section 20 provides *inter alia* that an employee of the ex-airlines company would be entitled to the privilege of gratuity in the same manner as he would have been entitled if the undertaking of the ex-airlines companies had not vested in the Corporation "and shall continue to do so", until and unless his employment in the Corporation is terminated or until his remuneration, terms and condition are *duly altered* by the Corporation. It is argued that the terms and conditions in regard to gratuity have not been "duly altered". The judgment of the Bombay High Court delivered by Hon'ble Justice K. T. Desai on the 16th April, 1957 in the case of the Life Insurance Corporation was relied upon.

189. It appears that on the 8th April, 1955, the Corporation published service rules for its employees in exercise of the powers conferred upon it by clauses (b) and (c) of sub-section (2) of section 45 of the Air Corporations Act, 1953, with the previous approval of the Central Government. As rule 2 will show they were intended to define, *inter alia*, "the retirement benefit" of the employees. In Chapter XV the only retirement benefit granted to the employees is about provident fund. Each employee was required to contribute a minimum of 8⅓ per cent. and a maximum of 18 per cent of the basic pay. The Corporation's contribution to the fund was however, limited to 8⅓ per cent. of basic pay. The same provision has been made in Chapter XVI of the Service Rules (Ex. 7). Similar provision exists in Chapter XIV of the service rules for the Flying Crew (Ex. 8) and in Chapter XVI of the service rules for the Aircraft Engineering Department (Ex. 9). It is argued that as there was no positive act on the part of the Corporation to withdraw the gratuity benefit which the employees of the two ex-airlines companies enjoyed prior to nationalization, so it must be held to continue even now. As the provisions in the two agreements will show, the Corporation never acceded to the right of the gratuity of the employees of these two former companies. It only agreed to use its good offices to realise from those two companies money in the gratuity fund due to these employees. It failed in its efforts. In the background of this fact, it must be held that when in the service rules published in the *Gazette of India*, dated the 8th April, 1955, it granted only the provident fund to the employees as the retirement benefit, they by necessary implications withdrew the gratuity benefit from the employees of these two airlines companies.

190. I have carefully read the judgment of the Bombay High Court. It is based upon the provisions of the Life Insurance Act, 1956, the terms whereof are not in *pari materia* with those of the Air Corporations Act. Under sub-section (2) of section 11 of the Life Insurance Act, 1956, the power is given to the Central Government for the purpose of rationalizing the pay scales of employees of insurers whose controlled business had been transferred to and vested in the Corporation or for the purpose of reducing the remuneration payable to employees in cases where in the interest of the Corporation and its policy holders, a reduction is called for and to alter terms of service of employees as to their remuneration in such manner as it thinks fit. No corresponding provision exists in the Air Corporations Act.

191. The case of Sri N. J. Chavan V. P. D. Sawarkar, reported in LIX Bom. L.R. at page 993 was also relied upon by Sri Buch and it was pointed out that the Corporation is a "successor" of the two ex-airlines companies

and as such is bound under section 18(3)(c) of the Industrial Disputes Act, 1947, by the gratuity scheme in force in the ex-airlines companies. The facts of that case are distinguishable from those of the present case. Here the business is vested in the Corporation under a statute and not by any transfer from the previous owner.

192. Referring to section 22(1) of the Air Corporations Act, Sri Vimadlal stated that as the two ex-airlines companies did not supply to the Corporation the particulars of the sum due under the gratuity scheme within 30 days from the appointed date, the Corporation is relieved under subsection (2) thereof of liability, if any, for gratuity.

193. It appears that prior to nationalization, the Government of India deputed Sarvasri Sadasheo Prasad and Parekh to go round to find out the assets and liabilities of each of the ex-airlines companies. Sri Sadasheo Prasad who is now dead subsequently became the Secretary of the Corporation as will be evident from the Gazette (Ex. U-48). Sri Parekh is still in the service of the Corporation. The documents Exts. U-95 and U-156 show that the gratuity schemes in force in the two ex-airlines companies were brought to the notice of the Corporation. There is no positive evidence to show that these were brought to the notice of the Corporation within the period prescribed by section 22 of the Air Corporations Act, but from the circumstantial evidence on record, it seems to me that these two schemes were brought to its notice within that period, though the Corporation may not have been able to realise the legal implications thereof. It appears that some employees have brought suits in the Civil Court for the recovery of gratuity and the matter is still *subjudice*. I, hold that after the promulgation of the service rules by the Corporation, the benefit of gratuity admissible under the schemes in force in the two ex-airlines companies were "duly altered". This disposes of clause (a) of this demand.

194. As regards clause (b) of this demand, the financial position of the Corporation has already been dealt with above. It has been running at loss. Section 9 of the Air Corporations Act provides that the Corporation shall act on business principles. As Sri Vimadlal contended that looking at the Corporation from business point of view, its position is that it has no reserve fund. It would not have been in a position to pay even its dividends if it had been a limited company. It is in debts and ever since its commencement, it has been incurring losses. In these circumstances it is not proper at present to introduce a gratuity scheme for the employees. Gratuity is a retirement benefit. The Corporation estimates that the introduction of gratuity scheme would cost it about Rs. 25 lakhs per annum. If in future the financial position of the Corporation improves, then it would be the time to consider the introduction of the gratuity scheme.

195. It was stressed on behalf of the employees that this is a nationalized industry and the principles governing private industrial establishment should not be applied. In the face of the statutory provisions contained in section 9 of the Act, I am of opinion that sound business principles applicable to private sector are equally applicable to this industry.

196. It was argued that the Corporation can raise its fares and pay gratuity out of this additional earning. Industrial Tribunals must protect the interest of consumers also. I do not think it is proper for this Tribunal to encourage the raising of the fares and thus prejudice the interest of the consumers.

197. The principles upon which a gratuity scheme is to be introduced are now well established by decided cases. Stability of business, its financial capacity and its future prospects are some of the important points to be kept in view. No doubt after the nationalisation, the Air Transport Industry may be regarded as having an assured future and as such having stability, but it has not the financial capacity to bear the additional cost involved in the introduction of the gratuity scheme, nor can it be said that its future prospects are bright just at present. I hold that this is not the time to introduce gratuity scheme for the employees of the Corporation.

DEMAND NO. 23—TEMPORARY STAFF

198. Whether the following demands in respect of temporary staff are justifiable and what directions are necessary in respect of the same?

"(a) The temporary employees who have completed one year service should be eligible to contribute to the Corporation's Contributory Provident Fund with effect from the date such employees have completed one year's service and the Contributions should be deducted in suitable monthly instalments to be agreed to by individual employees concerned.

(b) Temporary employees on completion of one year's service should be eligible to all the benefits to which the permanent employees are entitled.

(c) Casual and daily rated employees who have completed one year's service should with effect from 1st January, 1956 be eligible to all the benefits as are admissible to temporary employees.

(d) The daily rated employees should be paid at the rate which would secure to them the pay and allowances attached to the post. In case where this procedure has not been followed for payment, all arrears accruing to the employees as a result thereof should be paid forthwith."

Sri Buch explained that the words "temporary employees" used in this demand include also casual and daily rated employees. Sri B. D. Saxena on behalf of the Corporation stated that at present the casual and daily rated employees are allowed to contribute to provident fund with effect from 1st January 1957 after the completion of 2 years' continuous employment. Further it was stated that they are paid the daily wages by dividing monthly rates by 30 days and no such wages are paid to them for Sundays or any other day on which they do not work. The Tribunal suggested that the daily rate may be worked out on the basis of the total emoluments of the month dividing it by the number of days of the month and the daily rated worker may be paid at that rate even for Sundays and holidays provided he works on the day following Sunday or holiday. The Corporation's representative agreed to the above proposal with the provision that this should apply for future and not for the past. Sri Buch wanted that the arrears should also be computed on this basis. The sole question for determination so far as wages for daily rated and casual employees are concerned, is whether the formula suggested by the Tribunal should apply to the past also.

199. Clause (e) of item 21 of the second agreement provides that daily rated employees shall be paid at the rate which will secure to them the pay and allowances attached to the post. In the Service Rules, Ex. 7, there is no provision for casual and daily rated employees. A "temporary"

employee has been defined in those rules an employee whose services have been engaged for a specified period which may be extended from time to time for work of temporary nature against the 'temporary' sanctioned establishment." It appears that casual and daily rated employees are appointed not against any sanctioned strength. Sri Rajindra Singh stated that prior to the fixation of the standard force there were a large number of daily rated and casual employees, but after the standard force was fixed, most of the employees are in temporary cadre and very few are daily rated or casual. Be that what it may, it is clear that most of the daily rated and casual employees were really a part of "temporary" sanctioned strength. Clause (e) of item 21 of the second agreement entitles the daily rated and casual employees to the scale of wages attached to the post They are, therefore, entitled to the daily wages as suggested by the Tribunal not only for future but also for the past. Arrears for the past should be paid to them within 4 months of the enforcement of this award.

200. It was argued on behalf of the Corporation that according to clause (d) of item 21 of the second agreement, it is only after the completion of one year's continuous service that a casual and daily rated employee becomes eligible for the benefits admissible to a "temporary" employee. That is a general provision in regard to casual and daily rated employees. Clause (e) of item 21 of the second agreement deals specifically with wages and there is no condition in it of completion of one year's continuous service for the determination of the daily wages in the manner provided therein. Where, in an agreement, there is a general provision and also a special provision in regard to any matter, the special provision over-rides the general provision. That is a well recognized principle of interpretation.

201. As regards contribution to provident fund by casual and daily rated employees, Sri B. D. Saxena stated that they are entitled to contribute to the provident fund with effect from 1st January, 1957 on completion of 2 years' continuous service. I do not know on what basis this condition of two years' continuous employment has been attached to make the casual and daily rated employees eligible to contribute to provident fund. According to clause (d) of item 21 of the second agreement, casual and daily rated employees on completion of one year's continuous service become eligible for the same benefits as are admissible to "temporary" employees. Rule 189 of the Service Rules Ex. 7 provides that every employee who has completed one year's continuous service shall, subject to the rules to be made in this behalf, contribute to the provident fund at the rates specified therein. Para. 12 of the Provident Fund Regulations, Ex. 3, lays down that an employee on the completion of one year's continuous service shall be required to become a member of the Fund. That being so, every casual and daily rated employee on the completion of one year's continuous service is entitled to make contribution to the provident fund. This should be followed in future and for the past. Facility should be given to them to pay up the arrears of the contribution in easy instalments. The Corporation has already issued instructions in regard to the arrears of contribution to the provident fund and the same are acceptable to the employees as stated by Sri Buch. This disposes of clause (a) of this demand.

202. Dealing with clause (b) of this demand, Sri Buch filed a list Ex. U-207 of 5 employees who, according to him, were discharged on one day's notice instead of one month's notice as applicable to permanent employees. The Corporation investigated the cases of these 5 employees and Sri Rajindra Singh stated that they were not drivers but chowkidars. None of them, it was stated on behalf of the Corporation, had put in one

year's continuous service and so they were not entitled to the notice of discharge as required for permanent employees. As rule 3 of Service Rules, Ex. 7 will show, they apply to all personnel in the whole time employment of the Corporation whether permanent or temporary. As supplementary instructions will show, they do not apply to daily rated staff. According to clause (b) of item 21 of the agreement, temporary employees on completion of one year's continuous service are eligible to all the benefits to which the permanent employees are entitled. This right of the "temporary" employees is not denied by the Corporation. If in any case, a temporary employee has in the past been denied the benefit to which he is entitled under item 21(b) of the second agreement, he should bring this fact to the notice of the Corporation within 3 months of the enforcement of this award and the Corporation shall grant him relief, if due, as expeditiously as possible.

203. The claim as contained in clause (c) is not a new one. It is based upon clause (d) of item 21 of the second agreement. The only difference is that there is no condition of "continuous" service for one year in this case. Item 21(d) of the second agreement must be given effect to and I decide accordingly.

204. As regards clause (d) of this demand, it has already been held above that a daily rated and casual employees should be paid wages at a rate which would secure to them the pay and allowances attached to the post and the arrears should also be paid.

205. The Employees' Union filed the list Ex. U-232 to show that certain employees were denied the benefits which were due to them under the agreement. At page 18-7 of this exhibit the union gives the instances of employees who were paid at the rate of Rs. 61 per month instead of the prescribed rate. Sri Rajindra Singh explained that they were paid Rs. 61 per month because of the rates prescribed by the Bengal Chambers of Commerce for cleaners. He agreed that according to the agreement they should be paid Rs. 50 per month as basic pay *plus* various allowance and undertook on behalf of the Corporation to pay the arrears at this scale from 1st January, 1955, or from any subsequent date when they were appointed. In regard to Sri George also, he admitted that he had been underpaid for some time and all arrears would be paid to him early. He added that Sri George was absorbed in regular force about a year ago. Sri Rajindra Singh contended that if there was any other employee who was entitled to arrears and his case was brought to his notice, he too would be paid the arrears. The cases of employees at page 18-8 of Ex. U-232 were also discussed and Sri B. D. Saxena gave an undertaking on behalf of the Corporation that if any employee had been paid wages less than what was laid down in the schedule of daily rates prescribed by the Corporation, then arrears would be paid to him. The casual and daily rated workers should be paid wages as decided above and the arrears should be paid to them.

DEMAND NO. 24—RETIREMENT AGE

206. This demand is as follows:—

Whether the following demand in respect of retirement age is justifiable and what directions are necessary in respect of the same?

> "An employee who has not been intimated the date of his retirement by the Personnel Officer of his Region and has subsequently been asked to retire, should be entitled to receive all the

benefits such as leave salary, enjoyment of any type of leave due to him and should be entitled to passage facilities also. In such cases the right and privileges of the employees concerned should not be adversely affected. In cases where the benefits have been denied the same should be restored to the employees concerned without delay."

The first agreement provides that the employees shall retire at the age of 55 years, but the existing employees who have attained the age of 52 and above on 1st April, 1955 were to retire at the age of 57 years. In the second agreement, it was provided that the employees shall be given three months' advance notice about the date of retirement, but failure to give such an intimation would not affect the date of retirement in any way. As regards employees upto grade 12 who had already retired and who had not received adequate notice, it was provided that they would be given leave salary for the period of privilege leave admissible under the rules. Rule 12 of the Service Rules, Ex. 7, carries out the provision of the agreements in regard to the age of retirement.

207. In the statement of claims the Employees' Union complained that in some cases the Corporation has brought down the age limit to 35 years and the employees who were yet to attain the age of 55 have been compelled to retire and all leave standing to their credit had been disallowed at the age of retirement. Instances of pre-mature retirement were not cited before the Tribunal. The whole discussion turned round the grant of leave or payment in lieu thereof after retirement. The case of Sri Bob was cited and it was stated that he was given 30 days' notice for retirement during which period he availed leave, but his 11 days' leave was forfeited. Sri Rajindra Singh stated that Sri Bob was paid salary for the remaining 11 days on the 16th April, 1956. Sri Buch stated that there were many other instances in which employees were deprived of the various benefits on account of their not being able to avail leave.

208. The second agreement gives a right to employees to receive notice of retirement 3 months in advance. Where there is a right there is a liability. It was expressly provided in the agreement that failure to give notice shall not affect the date of retirement in any way, but it was not stated that any other consequence will not arise. Had the notice been given, the employee would have availed the leave due to him. I hold that such of the employees as have already retired without receiving three months' notice are entitled to privilege leave due to them under the rules or payment in lieu thereof.

DEMAND NO. 25—PRIVILEGE LEAVE

209. This demand is as follows:—

"Whether the following demands in respect of privilege leave are justifiable and what directions are necessary in this respect?

(a) Privilege leave due on 31st December 1954 in accordance with the rules of the former airlines could be carried forward notwithstanding the prescribed limitation of 90 days. Employees who have not been allowed such credit, should be allowed to carry forward their accumulated leave or be paid in lieu thereof to the extent such leave has been refused to be carried forward.

(b) When the total period of absence in the aggregate from duty on leave without pay and allowances does not exceed 2 years during the tenure of service of an employee, it should not have the effect of postponing the date of his annual increment.

(c) For the purpose of determining privilege leave entitlement the periods of absence on types of leave indicated below alone should count as service:—

(i) Casual leave, (ii) Compensatory leave, *i.e.*, a "day off" in lieu of attending work on a normal off day. (iii) Sick leave, (iv) Quarantine leave, (v) Special leave granted by the Corporation, (vi) Accident and disability leave. Subject to any statute, no periods of absence any other types of leave should count as service for the purpose of determining leave entitlement."

Sri Buch stated that as the claims contained in clauses (b) and (c) of this demand are already covered by the rules framed by the Corporation, he did not press them.

210. As regards clause (a), he stated that in some of the ex-airlines companies, privilege leave was allowed to accumulate upto 120 days. He was not able to point out any rule of any ex-airlines company to this effect. Sri Rajindra Singh stated that the Corporation has carried forward the leave earned in the ex-airlines companies upto a limit of 90 days. Sri Buch was not able to point out any instance of any person who was entitled to more than 90 days leave in the ex-airlines companies. This demand is misconceived and it is disallowed.

DEMAND NO. 26—LICENCED WELDERS

211. This demand is as follows:—

"Whether welders approved for welding on current types should with effect from 1st January, 1956, be placed in salary Grade No. 8, and their pay regulated accordingly?"

Sri Buch stated that actually the Corporation has placed the welders in grades 3 to 8. He contended that licenced welders are granted licences by the Director General of Civil Aviation on different types of metals and their licences are renewed every six months. He claimed higher grades for them on the ground of their being highly skilled workmen. He relied upon the proceedings of a meeting held between the union and the Chairman on the 23rd and 24th January, 1955, Ex. U-50. The correctness of these minutes was, however, disputed by the Corporation and it is not possible to rely upon them. The list Ex. U-227 was filed to show that certain welders had been denied higher grades to which, according to the union, they are entitled

212. In the second agreement the case of welders was discussed and the union put forward the claim that they should be placed in grade 8. The Chairman of the Corporation, without conceding to the demand, promised the examination of the matter. It appears from the statement of Sri T. D. Kumar, Engineering Manager of the Corporation that after examining all the aspects of the matter, the following principles have been formulated for placing the welders in different grades:—

Welders with one approval were placed in grade 5.

Welders with two approvals were placed in grade 5 with 3 years seniority.

Welders with three approvals were placed in grade 6.

Welders with four approvals were placed in grade 7.

Welders with all types of welding approvals were placed in grade 8.

This gradation is subject to the existence of vacancies. Sri Kumar stated that a person may be incharge of a section or he may be carrying on some other higher job where the welding is not the only qualification *e.g.*, a foreman who is also a welder. He admitted that there are a few welders in grade 3 or 4 also *e.g.*, at Calcutta where there is a large number of welders and it was not possible to put them in higher grade. He informed that welders in grades 3 and 4 have only one approval for Aluminium. He was asked whether it was a fact that some employees of the ex-airlines companies were working as welders and had the approvals yet they were classed as mechanics and were not given wages of welders classified as such. He answered that in the Services Committee rules there was no category of welders as such so far as he was aware. According to him, a welder falls in the general classification of mechanics. Some of the welders are in grade 8 which is chargehands' grade.

213. One approval means capacity to weld one kind of metal and four approval mean capacity to weld four kinds of metals.

214. Referring to the list in Ex. U-227, Sri Buch stated that Sri T. C. Jain who holds four approvals is drawing Rs. 430 whereas Sri Damodaram who also holds four approvals is drawing only Rs. 340. As explained by Sri Kumar, Sri T. C. Jain is a foreman at Calcutta and that is why he has been given a higher grade whereas Sri Damodaram is only a welder. It appears that upto grade 9 only mutual transfers are allowed or on compassionate grounds. From grade 10 onwards the appointments are made on All India basis. Sri T. C. Jain's appointment was made on Calcutta area basis. The Tribunal asked Sri Buch whether he was in a position to give an undertaking on behalf of the employees upto grade 9 that they would not object to their transfer from one area to another. He replied that he was not in a position to give such an undertaking. That being the position, it is not possible to compare Sri T. C. Jain with Sri Damodaram, who belong to different areas. Sri T. C. Jain's promotion may be in all probabilities due to vacancy in the area in which he was serving. Moreover, Sri Damodaram had only 3 approvals and so was only an approved welder and not chargehand in the Daccan Airways. His claim that Sri Damodaram holds 4 approvals appears to be incorrect. As regards Sri K. B. Chatterji in Ex. U-227, Sri Kumar stated that he was working as a cleaner and not as a welder and so he was in grade 1. He added that he may be holding an approval as a welder but that does not entitle him to be in the scale of wages of a welder. To earn that scale he must have been appointed as such by the Corporation and must be doing the work of a welder. He pointed out that sometimes employees holding approvals as welders themselves request to be allowed to work as welders in order that they may have practice of welding and may obtain further approvals. He contended that if they do so, it is not according to the directions of the Corporation but in their own interest. Of the persons mentioned in list Ex. U-227. Sarvasri K. Natrajan and T. C. Jain alone were working as welders, according to Sri Kumar, and the rest were not doing the work of welders. Sri Buch claimed that persons from whom the work of welders is regularly taken by the Corporation should be given the grade of welders even though their appointment order may not specify this.

215. The welder's work does not require training for a length of time. Sri Kumar stated that some of the workers who dabble in welding are trained in a week's time in the Indian Oxygen Co. and pass their test.

216. The claim of the union that the minimum grade for the welders should be grade No. 8 is extravagant. Their gradation should depend upon the number of their approvals and I see no valid ground to interfere with the grades allotted to them by the Corporation as stated by Sri Kumar. It appears, however, from the statement of Sri Kumar that at Calcutta there are a few welders in grades 3 and 4. They have only one approval. According to the standard evolved by the Corporation itself, they should be in grade 5 and I direct accordingly. This direction will apply not only to the welders at Calcutta but also to those at any other place under the Corporation.

DEMAND NO. 27—TEMPORARY TRANSFERS

217. This demand is as follows:—

"Benefits arising out of the issue of orders converting original temporary transfers to permanent transfer should be granted without delay."

Item No. 27(c) of the second agreement shows that the union pointed out cases in which employees on temporary transfer have been deprived of the allowances and privileges due, when on the expiry of the period of temporary transfer, the same was converted subsequently into a permanent transfer. It was agreed at that time that after the transfer was made permanent employees would not be deprived of the benefits accruing to them under the original orders of temporary transfer. Further when such an employee was required to break his house and move to the station on permanent basis he would be granted necessary passage facilities and joining time.

218. The employees complain that this agreement is not being implemented. They cited the instance of Sri V. P. Kumar, A.M.E.-13. It appears from Ex. 13(12/2) that he was transferred to Srinagar on the 23rd April, 1955 on a temporary basis for three months. His posting, however, continued there beyond three month. According to rule 92 of the Service Rules, Ex. 7 and 9, he was entitled for the daily allowance at the rates laid down in rule 103, read with rule 104 upto a maximum period of 90 days. Rule 92 requires that the authority competent to order for the transfer will review the posting from time to time and in any case in the beginning of the third month so as to consider whether or not the period of his further stay at the outstation justifies the transfer being made permanent. The rule further lays down that if the competent authority decides to convert temporary transfer into a permanent one, the decision shall immediately be communicated to the employee and his transfer is to be treated as permanent from the date the decision is communicated. A.M.E., V. P. Kumar sent not less than 9 reminders to the authorities enquiring about the likely duration of his temporary posting. He states that the Chief Engineer's replies as well as his verbal assurances affirmed that the posting was to continue to be temporary. Owing to this Sri V. P. Kumar was subjected to additional expenses in running two establishments. It was only on the 6th March, 1956 that he was informed that his temporary posting at Srinagar must be treated as a permanent one with effect from the 23rd July, 1955. By the application dated the 3rd May, 1956, he claimed the payment of daily allowance till the 6th March, 1956. If the facts stated in his application, Ex. 13(12/2), are correct, then he must be given the daily allowance upto the date when the order converting the temporary transfer into a permanent one was communicated to him. In fact all employees

on temporary transfer, having facts similar to those of Sri V. P. Kumar are entitled to the daily allowance. Rule 92 of the Service Rule casts a duty upon the competent authority to take a decision *before the expiry of 90 days* whether or not the temporary transfer is to be converted into a permanent one. The only way in which this duty can be implemented is to direct that if the temporary transfer of any employee is continued even after the expiry of 90 days and he has not been informed before the end of that period that his temporary transfer has been converted into a permanent one, then he should be allowed the daily allowance to which he was entitled before the expiry of 90 days. Apart from the fact that on temporary transfer an employee has to live separately from his family, he has to incur additional expenditure by running two establishments—one at the permanent place of his posting and the other at the temporary place of posting.

219. Sri Narendra, President of the Employees' Union, stated that when the temporary transfer is converted into a permanent one, the daily allowance which the employee received on account of his temporary transfer was set off against the settling-in-allowance admissible under rule 100 of the Service Rules. Sri B. D. Saxena denied this and stated that if any instance of this nature is brought to his notice then the deductions will be refunded. This assurance should satisfy the employees. I direct that if the daily allowance earned during the period of temporary transfer has been adjusted in any case against the settling-in-allowance, then the same should be refunded to the employee concerned.

220. It was argued on behalf of the Corporation that the demand as put forward is restricted in its scope in as much as the only thing asked for is that there should be no delay in the grant of benefits arising out of the issue of orders converting original temporary transfers into permanent ones. It is implicit in the demand as to what those benefits are. On an interpretation of item 27(c) of the second agreement and rule 92 of the Service Rules, I have held that the payment of daily allowance beyond 90 days flows from them if the employee is not informed before the expiry of 90 days that his temporary transfer has been converted into a permanent one.

DEMAND NO. 28—DISPENSARY SURGERY

221. This demand is as follows:—

"Whether the following demands in respect of dispensary surgery are justifiable and what directions are necessary in this respect?:—

(a) Dispensary or Surgery wherever maintained should be kept open for the duration of the shifts and a qualified Compounder should be on duty throughout.

(b) At out stations the Corporation should nominate or appoint Medical Officers to give free medical treatment to the employees at those stations.

(c) In the event of the Medical Officer of the Corporation is of the opinion that owing to inadequacy of facilities or to the severity of illness or ailment or in cases where the medical officer of the Corporation could not be consulted or approached owing to unavoidable circumstances or in advance, an employee should be allowed to be treated at his residence, and

he should be entitled to receive towards the cost of such treatment incurred by him. All expenses including those incurred in consulting specialists which are outstanding should be reimbursed without delay."

In regard to clause (a) of this demand Sri Buch admitted that except at Nagpur and Madras, the dispensary remains open for the duration of the shift and a compounder remains on duty. His complaint was only in regard to Nagpur and Madras. Sri Rajindra Singh contended that the dispensary surgery were at those places where there were workshops with night shifts, but at Nagpur and Madras there was no such workshop.

222. Item 9(c) of the second agreement provides that dispensary wherever maintained should be kept open for the duration of the shift and a qualified compounder should be on duty throughout. Rule 164(c) of the Service Rules, Ex. 7, carries this out. Item 9(c) of the second agreement or rule 164(c) of the Service Rules are not limited in their application to places where there are workshops. The agreement must be given effect to. I allow the demand contained in clause (a).

223. As regards clause (b) of this demand Sri Buch abandoned it saying that medical officers have been nominated by the Corporation at all the outstations.

224. As regards clause (c) of this demand, I may first refer to rule 164(b) of the Service Rules. It provides that an employee desirous of consulting a medical officer at his (employee's) residence shall have to pay for transport expenses for journeys to and from his residence. The union wants to extend the scope of rule 164(b). It claims that even when in the circumstances stated in this clause an employee is treated at his residence, he should be paid by the Corporation all the cost of his treatment. On the 24th December, 1957, the Corporation issued a circular, Ex. 68, in which it states that it lies within the discretion of the Medical Officer of the Corporation to countersign medical bills of expenses incurred by an employee on the advice of a private medical practitioner in the event of the medical officer being unable to comply with the employee's request to visit the latter's residence. The term 'medical bill' herein used includes only cost of such medicines as are authorised in the Service Rules—C.F. note below rule 164. It was made clear, however, that no part of the visiting, consultation or examination fee, if any paid to the private doctors in the above circumstances is reimbursable. I am of opinion that rule 164 of the Service Rules alongwith circular dated the 24th December, 1957, Ex. 68, amply provide for the medical attendance and treatment of the employees and there is no valid reason for extending the scope of rule 164 of the Service Rules as claimed by the employees.

DEMAND NO. 29 OF PART I
DEMAND NO. 4 OF PART III } UNIFORM

225. These two demands are inter-connected and they may be dealt with together. They run as follows:—

"Whether summer and winter uniforms and Monsson equipment should be those specified in the Uniforms Rules submitted already to the Corporation by the Union and the same should be enforced forthwith."

"Whether all staff specially the lower grades who had the benefit of winter uniforms prior to nationalisation should continue to have them?"

Ex. 24 is the schedule according to which employees are being provided with uniforms. Sri C. L. Kejriwal, Controller of Stores in the Corporation stated that in March, 1955, the Corporation provisionally prescribed scales of uniform and invited union's suggestions. This was presumably in accordance with item no. 25 of the second agreement. Ex. U-210 to U-216 is the correspondence which passed between the Employees' Union and the Corporation regarding uniforms. In September, 1956, the Corporation finalised the scale of uniforms after considering the suggestions received from the union. In Ex. 24, column (a) contains the provisions scale prescribed by the Corporation, column (b) indicates the suggestions made by the union and column (c) indicates the final decision of the Corporation. Prior to the nationalization the scale and pattern of uniforms was different from line to line and this continued upto the date when the Corporation prescribed the provisional scale. Sri Vimadlal stated that these schedules were prepared keeping in view the scale prevalent in the ex-airlines companies, financial implications, administrative aspects and the views of the departmental heads and the nature of the duties. The three chief guiding factors for the scale of uniforms were (1) contact with public; (2) spoiling of cloth by the nature of duties and (3) where for administrative reasons it was necessary that the employee should appear in uniforms *e.g.* 'darbans'.

226. The suggestions of the union were also kept in view. It was stated that at present the cost on uniforms is about 2 to 3 lakhs of rupees per annum and if the demand made by the union is accepted, then it would mean about 25 per cent. more.

227. The points of dispute in regard to uniform are:—

(1) about the number to be supplied initially,

(2) about the number to be renewed periodically,

(3) about the supply of foot-wear,

(4) about the type of uniform to be supplied to the cooks,

(5) winter uniform,

(6) about the supply of uniform to certain categories of employees who are at present not given any uniform.

228. In short the employees want that the scales of uniform suggested by them should be followed in entirety and the Corporation should have made no amendment in it. In fact it was stated at one stage that what is shown in Ex. 24 (schedule recommended by the union) was one to which Sri Kejariwal had agreed. This was denied by Sri Kejariwal and his assistant, Sri Harshwardhan. The minutes of the meeting held at Santacruz on the 19th and 20th June, 1956, Ex. U-211 show clearly that the scale mentioned therein was only the recommendation of the union and not the joint decision of the union and the Corporation. These minutes were sent to the union for confirmation. The union suggested certain modifications in the minutes as in the enclosure to the letter, Ex. U-212, but no where was it mentioned that the scale was the joint decision. I hold that the heading of column (b) in Ex. 24 is correct and the scale mentioned under it was only the recommendation of the union and not the joint decision of the union and Sri Kejariwal.

229. I have gone through the scale of uniforms as contained in Ex. 24 and, except for a few modification to be indicated here-in-after, I am of opinion that it is fairly reasonable. It provides uniforms to all concerned. The union has produced no evidence to show that persons other than those mentioned in Ex. 24 were supplied uniforms by the ex-airlines companies. Having regard to the present financial position of the Corporation, no additional burden should be cast upon it on this account. There should be no spirit of dictation on either side, but spirit of co-operation.

230. The modifications in the scale as prescribed in Ex. 24 should be as follows:—

(1) For female sweepers and mallans the following scale of uniform has been prescribed:—

	Initial supply	*Replacement*
(a) Half sleeve blue cotton blouses	2	2
(b) Blue sarees	2	2
(c) Woollen sweater	1	1 every 3 yrs.

Having regard to the nature of work performed by female sweepers, this is inadequate. They have to be in the midst of dirt. While one set of uniform may be with the washerman, two may be in use. I, therefore increase the number of initial supply and replacement from 2 to 3 per annum. The woollen sweater will, however, continue to be supplied only once in three years. It may be mentioned that the Corporation agreed to increase the scale of sarees for the female sweepers from 2 to 3 per year, but wanted that it should not be retrospective. I agree to this.

(2) The same is the position in regard to sweepers and mallies. Blue half sleeve shirts, blue shorts, blue folded caps and I.A.C. Crests should be 3 for initial supply and 3 per annum for replacement.

(3) As regards ward boys, the union claimed the same scale of uniform as for peons, but the Corporation decided not to issue any uniform to them. In fact it was stated that there was no ward boy in the Corporation. If that is so, there was no occasion for putting in the category of ward boy in the schedule of uniforms, Ex. 24. They must be supplied with uniform on the same scale as to the peons.

(4) For compounders the union claimed white drill long coat 4 every year. The Corporation has not prescribed any uniform for them. In the hospitals compounders are supplied with aprons and I direct accordingly. The number to be supplied initially and also to be replaced every year should be 4. In fact it was stated by Sri Harshwardhan that although no uniform was prescribed in Ex. 24 for compounders, yet they are supplied with aprons.

(5) As regards certain flight mechanics who have to fly in chartered planes, Sri Harshwardhan stated that they have been issued uniform on the same scale as to the pilots and they are also renewed in the same manner as in the case of pilots. The Corporation has no objection to supply uniforms to such of the mechanics as have to do the work of flight engineers occasionally.

231. As regards foot wear, no ex-airlines company provided it to the security staff. Subject to the modifications indicated above, I hold that the scale of uniform as prescribed by the Corporation in Ex. 24 shall

continue in force. These modifications will be effective from the date this award comes into force.

DEMAND NO. 30—WORK ON SUNDAYS/HOLIDAYS

232. This demand is as follows:—

"Whether the following demands in respect of Sundays/Holidays are justifiable and what directions are necessary in respect of the same?

(a) Overtime in respect of working on 'Holidays' should be paid to employees upto grade 12, and where a compensatory 'day off' falls on such holiday the employee concerned can avail that day off on the day following that holiday or later at his option.

(b) Weekly holidays normally known as Sunday in the cases of places like Deccan and Nepal be deemed to mean Friday and Saturday respectively.

(c) Holidays when they fall on 'off' days can be availed in addition to that 'off' day. Day off should be allowed to be prefixed and/or suffixed to any other type of leave or to compensatory day off."

As regards clause (a) of this demand, Sri Buch stated that the employees claimed—

1. that the daily rated and casual employees upto grade 12 may also be paid overtime allowance if they are called upon to work on Sundays and holidays, and

2. that if a compensatory 'day off' falls on holiday then the employees should be given a 'day off' on the day following that holiday or later on.

According to rule 58 of the Service Rules, an employee in grades 1 to 12 who is required to work on holiday (other than Sunday) shall be paid overtime at double the ordinary rate of wages. Evidently this rule is not being applied to daily rated and casual employees. Sri Vimadlal stated that these employees get wages only for the days they work and they are given only 2 paid holidays in a year according to the suggestion of the Government. Social justice demands that the benefits of rule 58 should not be denied to the daily rated and casual employees, if they work immediately before and after the holiday. This direction will be affective from the date from which this award comes into force.

233. As regards the compensatory 'day off', Sri Y. N. Verma stated that this matter had been raised before the Corporation several times and it was found that different practices were prevalent in different areas. The whole matter has now been reviewed by the Corporation and instructions have been issued that if a 'day off' falls on holiday, then substitute 'day off' is not to be given. Except this year in the case of the Republic holiday, in Government offices also no compensatory day off is given, if a festival holiday or any other holiday falls on Sunday. I see no valid ground to depart from this long practice obtaining in Government offices.

234. The union filed the list, Ex. U-247, giving 8 instances of the employees who were called upon to work on Sunday were not given weekly off. If that is correct, then the Corporation should give them the weekly day off due to them.

235. Sri Muthuswamy, Secretary of the Engineers' Association referred to Ex. E-12/1, E-13(12/1) and E-46. It shows that Sri V. P. Kumar, an A.M.E. posted at Srinagar has been denied a large number of weekly days off and at one time he was allowed by the Chief Engineer to avail of them at Delhi. But, subsequently objections were raised and the days spent by him at Delhi were adjusted against his privilege leave. It appears that at Srinagar, there is only one engineer and he is not able to avail of any weekly day off. Sri Y. N. Verma gave an undertaking on behalf of the Corporation that Sri V. P. Kumar will be granted leave on full pay for all the Sundays and holidays on which he worked, in addition to the leave due to him under the rules. The cases of some other engineers, mentioned in Exs. E-43 and E-45 were also referred to by Sri Muthuswamy and Sri Y. N. Verma stated that the cases of all such engineers who worked on holidays and Sundays will be looked into by the Corporation and they will be granted leave with full wages for the number of days they worked on such days and were not compensated, in addition to the leave due to them under the rules. These undertakings should redress the grievance of the engineers under this head. The Corporation should implement the undertakings as expeditiously as possible.

236. As regards the demand as continued in clause (b), Sri Buch abandoned it on behalf of the employees.

237. As regards clause (c) of this demand, the first part of it has already been dealt with above. By the second part, the employees want that they should be allowed to prefix and/or suffix holidays to leave and compensatory days off. It was stated on behalf of the Corporation that it has no objection to this if the prefixing and suffixing is done with the permission of the officer concerned. It was pointed out by the Corporation that compensatory day off cannot be availed of by an employee at his option. The statement made on behalf of the Corporation reasonably meets the demand contained in clause (c).

DEMAND NO. 31—RADIO AUTHORISED PERSONNEL

238. This demand is as follows:—

> "Whether personnel in the Radio Department holding radio authorisation to sign out radio equipment as airworthy should have the same status to that of A.M.Es. and that such Authorised Personnel should not be started or placed in grade lower than salary grade No. 10."

Sri Samtani, on behalf of the Radio Authorised Personnel referred to para. 70 at page 90 of the Services Committee Report wherein it was recommended that the radio engineers should be treated as A.M.Es. with 'X' licence. He stated that in 1952, the Director General of Civil Aviation made a rule that the radio equipment in the aircraft should be checked up by radio authorised personnel and added that the minimum period of training of such personnel is 3 years. Ex. U-217 was filed to show that in the Air India International the holders of permits issued by the D.G.C.A. to find out aircraft radio equipment have been given A.M.E. grade 3 of Rs. 275—25—375. In the Corporation the radio authorised personnel have been put from interlinked grades 3 and 4 to grade 15. The D.G.C.A. does not hold any examination for radio authorised personnel. He grants authorisation on the recommendation of the employers. He is formulating rules for the examination of the radio authorised personnel. The difficulty which Sri T. D. Kumar, Engineering Manager foresees is that if a number

of the radio authorised personnel is given higher grade and he is not able to pass the examination held by the D.G.C.A., then it would mean his reversion, but in actual practice it is very difficult to revert a person who has been put in a higher grade. Appendix IV shows that the holders of licence 'X' start from grade 7 and not from grade 10. The possession of qualification could not be the sole *criteria* for placing a person in a certain grade. There must be vacancy in that grade. Radio Authorised Personnel is a technical person. There should be no difference between the scale of pay admissible to them in the Air India International Corporation and in the Indian Airlines Corporation. The latter should follow the scale applicable to such personnel in the Air India International, which is in accordance with the recommendations of the Services Committee Report. But, this will not be effective retrospectively. It shall take affect from the date on which this award comes into force.

DEMAND NO. 32—SERVICE RECORDS

239. This demand is as follows:—

"Whether adverse entries in the individual personal file should be made known in writing to the employees concerned and the employees concerned should have the right to inspect his service records with prior intimation to the personnel office concerned?"

The employees admitted that under the rules made by the Corporation. they do receive copies of the adverse entries but they claimed the right also to inspect their service records.

240. Service Records contain confidential reports about the employees which are of assistance in the assessment of comparative merit for promotion to selection posts *vide* para. 123, page 49 of the Services Committee Report. In all Government offices and well organised concerns, service records are confidential and no instance has been cited by the employees to show that service records are open for inspection to the employee concerned. This part of the demand is disallowed.

DEMAND NO. 32A—MISCELLANEOUS

241. This demand runs as follows:—

"Whether the following demands are justifiable and what directions are necessary in respect of the same?

(a) *Service Tenure*

(i) No member of the staff of the Corporation shall be discharged or dismissed or their services terminated except in accordance with the rules previously agreed with the Union. The procedure of terminating employment by notice particularly in respect of employees entitled to benefit admissible to permanent employees shall be deemed to be wrongful unless a proper charge sheet is issued to him and the rules of disciplinary procedure followed.

(ii) Standing orders governing the conditions of service should be framed in the light of objections to the draft standing orders of the Corporation submitted by the Union and the same should be adopted and applied uniformly at all the regions.

(b) *Conduct Rules*:

Principles and procedure with regard to disciplinary action, representation and appeal and the procedure for suspension, discharge or dismissal shall be laid down in precise terms in consultation and agreement with the Union, and the objections to the draft standing orders already submitted by the Union to the Corporation shall form the basis of such rules.

(c) *Annual Increment*:

All employees who have completed one year's service with the Corporation shall be paid their annual increments forthwith. Annual increment shall be admissible to all classes of employees if they have completed one year's service irrespective of their being casual, temporary or substitute. A list of such employees showing the month and the year on which they have completed one year's service should be furnished to the Union together with a statement showing whether annual increment have been paid or not.

(d) *Works or Joint Committees*:

Joint Committees shall be constituted in cases where the same have not been formed.

(e) *Departmental Heads Meeting*:

Proceedings of the Departmental Heads meeting should be furnished to the Union and the right of the representatives of the Union to attend such meetings should be acknowledged.

(f) *Housing*:

(i) The Corporation should take effective measures without delay to provide quarters to the employee at the earliest.

(ii) The Corporation should finalise its housing scheme particularly for places like Calcutta, Delhi, Bombay and Hyderabad and building activities completed at those places before the expiry of the year, 1958, if not earlier.

(g) *A.F.C.*

The employees of the Corporation working in their Air Force College at Begumpet shall be informed in writing individually that they are borne on the permanent rolls of the Corporation.

(h) *Service Rules*:

(i) Alterations or modifications of service rules or Standing Orders will be done in accordance with the procedure laid down in the Industrial Employment (Standing Orders) Act or under mutual agreement.

(ii) Rules, instructions or orders unilaterally issued by the Corporation adversely affecting the rights and privileges of the employees shall be deemed to have been rescinded and they shall cease to have any effect.

(i) *Interpretation of Agreement/Service Rules*:

If there is any conflict in interpreting any item or items of the Union-Management Agreement for the time being in force, the same should be referred for clarification to an Arbitrator if the parties to the agreement fail to reach any settlement.

(j) *Existing Rights*:

All rights, privileges, facilities and amenities which have existed hitherto shall not be altered to the prejudice of employees concerned for any reason by the Corporation except in so far as they would be required to be altered according to the results of these demands."

Before dealing with the various sub-clauses of this demand, it is necessary first to determine the position of the Corporation in regard to the framing of Standing Orders under the Industrial Employment (Standing Order) Act, 1946. The employees filed a note, Ex. U-346, giving a summary of the facts in regard to this matter. They are as follows:—

The Corporation certified Standing Orders at Bombay which were published in the Bombay Government Gazette on the 25th March, 1954. On the 26th December, 1954, the Corporation issued the rules on 'Conduct and Disciplinary Procedure Ex. U-348. Copies of these were sent to all the employees. "Mis-conduct" running into 44 items was defined therein. The nature of punishment that may be awarded was specified. As regards the officer who may impose the punishment, it was mentioned that he will be appointed by the Corporation in this behalf subject to the condition that no punishment of any kind shall be imposed on an employee by an authority lower than that which exercises power of making appointment to the category/grade concerned. Para. 14 of this order is important and may be reproduced. It provides:

"No order concerning discipline, as defined in rule 11, shall be passed on an employee (other than an order based on facts which led to his conviction in a court of law), unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself, provided that an employee may be placed under suspension at any time pending enquiry by an officer duly authorised in that behalf by the Corporation. Such an employee shall, when under suspension, receive such pay and allowances as may be laid down from time to time."

On the 4th February, 1955, the Corporation appointed officers to exercise powers to impose penalties. On the 8th April, 1955, the Corporation published in the Gazette of India Service Rules at page 495 of the Gazette in Chapter XIII, it was provided that the Corporation may from time to time issue Standing Orders governing the conduct of the employees and that every employee shall have the right to appeal, within such time and in accordance with such terms as may be prescribed by the Corporation, against an order of punishment or penalty passed against him, to a competent authority. On the 28th April, 1955, a question was raised in the Parliament regarding the conduct rules of the employees. On the 26th July, 1955, the Corporation issued Standing Orders in regard to Discipline and Appeals. On the 19th October, 1955 and on the 3rd

January, 1956, the Corporation issued circulars showing authorities competent to award punishment prescribed in the Discipline Rules. The Corporation submitted draft Standing Orders under the Industrial Employment (Standing Order) Act, 1946 in Delhi on 1st September, 1955, in Bombay on 11th September, 1955, in Hyderabad on 11th September, 1955 and in Calcutta on 24th March, 1956. On the 25th February, 1956, the Corporation, with the previous approval of the Central Government notified in the Gazette Standing Orders concerning Discipline and Appeal for the employees other than those who were governed by the Factories Act. This was done in exercise of the powers conferred by section 45 of the Air Corporations Act, 1953. On the 9th May, 1956, the Corporation notified changes in the draft Standing Orders submitted to the Commissioners of Labour in every State. On the 14th September, 1956, the Labour Commissioner, Bombay sent the draft Standing Orders to the Union to which the union submitted its objections on the 30th September, 1956. In September, 1956, the draft Standing Orders were certified in Delhi. Against this the union appealed and the appeal is still pending. On the 15th October, 1956, the union wrote to the Labour Commissioner, Bombay inviting his attention to the certified Standing Orders published in the Bombay Gazette, dated the 25th March, 1954. In October, 1956, the union submitted its comments to the Labour Commissioner, Calcutta. On the 8th June, 1957, the Corporation, in exercise of the powers conferred under section 45 of the Air Corporations Act, 1953 notified in the Gazette, Ex. 11, the Standing Orders applicable to employees in its workshop. The above facts as stated in Ex. U-346 were admitted by Sri Y. N. Verma as substantially correct.

242. Sri Y. N. Verma stated that there are two types of Standing Order—(1) applicable to factory workers and (2) applicable to non-factory workers. In the first agreement at item No. 34, it was provided that Standing Orders under the Industrial Employment (Standing Orders) Act would be framed. Sri Verma contended that the provision in the two agreements in regard to the framing of the Standing Orders is only for those who are governed by the Factories Act. Item 34 of the first agreement is general in its application and not restricted to factory workers. He admitted that at present there are only 2 Standing Orders which have been published in the Gazette as mentioned earlier. Standing Orders for factory workers are different from those of factory workers. Sri Verma added that when the draft Standing Orders were submitted to the Labour Commissioners of the different States, copies thereof were sent to the union. The Certifying Officer at Calcutta thought that he was not the competent authority and referred the matter to the Government of Bengal. The Bengal Government also thought likewise and referred the matter to the Government of India. Labour Commissioners of other States also held up the proceedings on account of this correspondence. This went on for one year. The Central Government then ruled that the State Government was the 'Appropriate Authority'. Then the matter was taken up by the Labour Commissioners. Only Delhi State has so far certified Standing Orders and that matter is still in appeal. The Certifying Officers of other States have not completed the proceedings so far. Sri Verma added that the Corporation felt that it would not be proper to have different Standing Orders in different States when the workers were transferable. Hence the Corporation applied to the State Governments for exemption under section 14 of the Industrial Employment (Standing Orders) Act. No reply has been received so far from any of the State Governments. The State Governments wanted

that the Corporation should have the Standing Orders examined by their Labour Commissioners. The Officers of the Corporation met the Labour Commissioners, discussed the matter with them and accepted some of their suggestions. The employees' representatives were not present at those discussions. In August, 1957, the Government of India ruled, after consulting their legal advisers, that the Central Government was the 'Appropriate Authority' for certifying the Standing Orders of the Corporation. Government of India has not till very lately exempted the Corporation from the Standing Orders. The Corporation proposed to obtain exemption from the Central Government. During this time when correspondence about the certification of the Standing Orders was going on, Sri Verma stated, that the Corporation felt that there must be some rules in the nature of Standing Orders and so the Standing Orders were framed by the Corporation and published in the Gazette, under section 45 of the Air Corporations Act, 1953. He contended that these will be followed till the Standing Orders have been certified by the Central Government or the exemption has been obtained. As regards the Conduct and Disciplinary Rules for the non-factory workers, he stated that they were exactly on the lines of Government Servant Conduct Rules and the principles of Article 311 of the Constitution are embodied substantially in them. After the close of the hearing of this case, the Tribunal received a letter dated the 5th February, 1958, from the Corporation forwarding a copy of the letter from the Ministry of Labour and Employment in which it was stated that "since the Corporation has published in the official Gazette rules regulating conditions of service of their employees, the Act is not applicable to it, in accordance with section 13B of the Act. In the circumstances it is not necessary for the Corporation to frame Standing Orders for their staff."

243. On the subject of the Standing Orders the views of the Government of India have not been consistent. First it thought that the State Governments were the 'Appropriate Governments'. Then it thought that the Central Government was the 'Appropriate Government'. Now it is of the view that the Industrial Employment (Standing Orders) Act is not applicable to the Corporation. According to section 13B of this Act, it does not apply to those industrial establishments to whom the Fundamental and Supplementary Rules, Civil Service (Classification, Control and Appeals) Rules, Civil Service (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilian and Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Court or any other rules or regulations that may be notified in this behalf by the *appropriate Government* in the official Gazette apply. The rules made by the Corporation have not been notified by the 'Appropriate Government', but by the Corporation itself, through its Secretary. Those regulations were made by the Corporation under section 45 of the Air Corporations Act. I am not able to see how section 13B of the Industrial Employment (Standing Order) Act, 1946, is applicable. I hold that this Act applies to the Corporation.

244. Another question which arises is that having regard to the provisions of section 45(2)(b) of the Air Corporations Act, 1953, which empowers the Corporation to make regulations regarding the "terms and conditions of service of officers and other employees", is it necessary for the Corporation to frame Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, which was enacted earlier. Section 7(3) of the Air Corporations Act provides that nothing contained

in that section shall be construed as authorising the Corporation to disregard any law, for the time being in force. The Air Corporations Act and the Industrial Employment (Standing Orders) Act are not in *pari materia* and the latter cannot be deemed to have superseded the provisions of the former in so far as the terms of employment of employees in the Corporation are concerned. If that were so, then the Factories Act, Payment of Wages Act and many other Acts relating to labour would become inapplicable. The past conduct of the Corporation also shows that it did not dispute the applicability to it of the Industrial Employment (Standing Orders) Act. It sought exemption under section 14 of that Act. In fact this contention was not pressed on behalf of the Corporation.

245. In view of item 34 of the first agreement, the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, must be framed and the procedure laid down therein should be followed.

246. Sri Buch claimed that the principles laid down in the case of Buckingham and Carnatic Co., reported in 1952 L.A.C., page 490, should be followed by the Corporation in terminating the services of the employees. Paras. 10 to 26 of the "Standing Orders" published in the *Gazette of India*, dated the 25th February, 1956, Ex. U-350 substantially follow the principles laid down in that case. Same is the position in rule 29 of the Standing Orders for the employees in the workshop published in the *Gazette of India*, dated the 8th June, 1957, Ex. 11. However, it is not necessary to record any definite finding on this point as the matter is bound to be gone into by the Certifying Officer when considering the Standing Orders. The Industrial Employment (Standing Orders) Act, 1946, applies to workmen who are defined in section 2(1) of that Act and all persons falling under that definition will be governed by the Standing Orders that may be framed. This disposes of clause (a) (i) of this demand.

247. As regards sub-clause (ii) of clause (a) of this demand, the procedure laid down in the Industrial Employment (Standing Orders) Act, 1946, will be followed and it is open to the union to file objections, if any, to the draft submitted by the Corporation.

248. As regards clause (b) of this demand, the principles and procedure with regard to disciplinary action and the appeal and procedure for suspension, discharge or dismissal are already laid down in the Standing Orders framed by the Corporation under section 45 of the Air Corporation Act. It is only fair and reasonable that the same should be made in the draft which the Corporation has submitted to the Certifying Officer for the certification of the Standing Orders. The unions will be notified of the same and they can raise objections, if any, before the Certifying Officer. Para. 26 of the Standing Orders, Ex. U-350 allows an employee to have the assistance of a 'friend' during the course of the enquiry. Such a 'friend' must be an employee of the Corporation and no outside representation is to be permitted. In para. 29(4) of Ex. 11, the workman against whom the enquiry is held has been given an opportunity to be defended by another workman working in the same department as himself. The right of representation has thus been recognized by the Corporation itself and if there is no provision about it in the draft Standing Orders, the union can bring this to the notice of the Certifying Officer.

249. As regards clause (c) of this demand, item 40 of the first agreement which provides that "increments in the salary will be automatic subject to satisfactory service" and item 21(d) of the second agreement

according to which "casual and daily rated employees on completion of one year's continuous service become eligible for benefits admissible to temporary employees" may be referred to. The agreements must be given effect to. The temporary, casual and daily rated employees become eligible to earn their annual increment on the completion of one year's continuous service. The first year's continuous service shall not count for the accrual of the annual increment. The claim of the union that it should be furnished a list of the employees showing month and the year on which they have completed one year's service together with a statement showing whether annual increments have been paid or not will involve a great deal of labour and work upon the Corporation. The employee concerned ought to know this. I see no valid reason to allow this part of this demand.

250. Dealing with clause (d) of this demand, reference may first be made to item 28 of the first agreement for the constitution of the Works Committee. Sri Buch stated that the Corporation has consented for the formation of the Joint Committees only in regard to that part of establishment which came under the definition of 'factory' and had not extended to other workers. He claimed that Joint Committees of Radio Officers, Pilots and Engineers should be formed and the existing Joint Committees should be enlarged. The union demanded further that the Joint Committees should be formed on area-wise basis and also for Hyderabad and Madras bases. Sri Y. N. Verma undertook on behalf of the Corporation that it will enlarge the existing Works Committees so as to extend them to all the workers, in accordance with the provisions of the Industrial Disputes Act, 1947, and the rules framed thereunder. The Corporation also agreed to have the Joint Committees at Delhi, Bombay, Calcutta, Madras and Hyderabad. This meets the demand contained in this clause.

251. As regards clause (e) of this demand, I do not think it is practicable. The Departmental Heads would not be able to express their opinions freely if the representatives of the union attend such meetings. Further I am of opinion that this part of the demand does not fall within the definition of the 'industrial dispute'. It is not a matter connected with the employment or with the terms of employment or with the condition of employment.

252. As regards clause (f) of this demand, financial consideration comes in the way. In the first agreement, in item 25 it was provided that measures will be taken to provide quarters to the employees at the earliest. In the second agreement, in item 26, mention was made on behalf of the Corporation in regard to the negotiations for securing sites to build quarters. It appears that the Corporation has provided 100 quarters at Bombay, but no quarters have been constructed at Calcutta, Delhi and Hyderabad. Sri Rajindra Singh stated that the Corporation has been negotiating for land in Calcutta and Delhi and it hopes to succeed in getting it. In the Second Five Year Plan Rs. 50 lakhs have been provided for buildings for the Corporation. This sum includes the cost of construction of office also. It was stated that the offices at the headquarter are spread over various buildings and this was administratively very inconvenient. Some officers were sharing the same room in the office. It was estimated that the project of the headquarter at Delhi was likely to cost about Rs. 20 lakhs and the same will be needed for the Calcutta office. Sri Buch referred to the Estimate Committee Report which was not in favour of the headquarters at Delhi. He suggested that the Corporation should use its good offices to secure advances to

the members of the union for the construction of houses by securing sites, by making advances to them and by helping the members to obtain advances from the Government. He added that the union wanted that some scheme may be evolved to help the employees or to find accommodation and offered on behalf of the union its co-operation in evolving such a scheme. He wanted that some time may be fixed for evolving such a scheme and if the Corporation does not provide houses, then house rent allowance may be paid to the employees till the houses are provided. The payment of house rent allowance does not fall within the terms of reference and this Tribunal is not competent to express any opinion upon it. The claim for the assistance of the Corporation as put forward by Sri Buch for the construction of houses by the employees themselves is a reasonable one and I would ask the Corporation to extend its co-operation in that matter. As regards location of the headquarters, it is immaterial whether it be at Delhi or at some other place. Building for it has to be constructed at some place, but an effort should be made by the Corporation to save as much as possible of the funds available for the construction of the building for office and to apply as much as possible in the construction of the quarters for the employees. It is not possible to fix any time limit for it as so many factors over which the Corporation has hardly any control operate in giving effect to the housing scheme. The Corporation, however, should try its best to give effect to item 25 of the first agreement and item 26 of the second agreement.

253. As regards clause (g) of this demand, it appears that the staff of the Air Force College at Begumpet were formerly the employees of the Deccan Airways, servicing the smaller aircrafts of the Air Force. After the nationalization, they became the employees of the Corporation. Provision in regard to them was made in item 48 of the first agreement. That work was withdrawn by the Air Force from the Corporation and so notices for termination of their employment were served on them to take effect from the 31st December, 1956. A dispute arose thereupon and before the Conciliation Officer of the Government of Andhra Pradesh, an agreement, Ex. 85, was arrived at between the Corporation and the Employees' Union on the 29th December, 1956. 341 employees were concerned. In regard to 184 of them, it was agreed that they shall be employed by the Corporation as new entrants at any centre or at any office and that they will be brought on regular establishment strength of the Corporation after putting in six months satisfactory service. As regards the remaining employees, it was agreed that they shall be absorbed on existing vacancies available and vacancies that may occur in future at any station or offices working within the country under the jurisdiction of the Corporation, provided they were suitable in experience to work on that post. The date of joining duty was the 15th January, 1957. This agreement which is subsequent to the agreements, dated the 1st May, 1955 and the 2nd February, 1956 must be given affect to.

254. There can be no doubt that there was a break in the continuity of their service. Sri Buch admitted that no salary was paid to them from the 1st January, 1957 to the date of joining. Sri Rajindra Singh stated that such of the 184 workmen as had put in 6 months satisfactory service have been brought on the regular service list. He added that he had been told that in Delhi area, letters have been issued to those who have completed six months but he had no information about other areas. He promised to check up and to see that the letters informing the employees of their having been brought on regular establishment are

issued early. By regular establishment he meant both permanent and temporary employee. I direct that the Corporation shall carry out the undertaking given by Sri Rajindra Singh within one month of the enforcement of this award.

255. As regards clause (h) of this demand, so far as the matters covered by the Industrial Employment (Standing Orders) Act, 1946 are concerned, the provisions of section 10 thereof and the relevant rules on the subject shall be followed for alterations or modifications of rules relating to them. Sub-clause (ii) is vague and a rule, instruction or order unilaterally issued by the Corporation adversely affecting the rights and privileges of the employees cannot be rescinded and declared ineffective without seeing those rules.

256. As regards clause (i) of this demand, Sri Buch stated that there was Liaison Committee and Labour Relations Committee in this Corporation and suggested that instead of going to courts it was advisable that the disputes between the parties be settled by mutual discussions. Sri Vimadlal contended that this matter is not an industrial dispute and that the Industrial Disputes Act makes provision for disputes connected with the interpretation of agreement or service rules. It is not proper to make a permanent order for reference of all disputes relating to interpretation of agreements or service rules to Arbitrator. Reference of a dispute to arbitration is a voluntary act of the parties and should not be imposed by an award *vide* section 10A of the Industrial Disputes Act, 1947. This demand is disallowed.

257. As regards clause (j) of this demand, it suffers from vagueness. It does not show what rights, privileges, facilities and amenities are intended. Suppose an employee is at present posted at a particular station and has the right to work there. To concede to this demand would mean that he cannot be transferred to any place. Section 9A of the Industrial Dispute Act, 1947 already provides notice of change by the employer to the employee. It adequately serves the purpose and no further directions are needed.

DEMAND NO. 33—RETROACTIVE APPLICATION

258. This demand is as follows:—

> "Whether the items enumerated in this schedule from 1 to 32A should, except where specifically otherwise provided, come into force from 1st January, 1955?"

In my decision under the various demands, I have already indicated the time during which they should be carried out. So far as the retrospective effect of the various demands is concerned, my general direction is that if any decision gives effect to any item of the two agreements, dated the 1st May, 1955 or the 2nd February, 1956, the decision will take effect from the date on which according to the agreements it was to take effect. But, if any direction is not based upon any of the aforesaid two agreements but arises from a fresh demand made by the union, then it will take effect from the date on which this award comes into force.

PART II

DEMAND NO. 4—FOREIGN ALLOWANCE

259. This demand is as follows:—

"Whether, Foreign allowance of Rs. 150 p.m., should be granted to all Indian staff drawing a basic salary upto Rs. 500 p.m., posted at any station in Nepal, *e.g.*, Kathmandu?"

The demand of raising foreign allowance is in respect of Kathmandu in Nepal only. According to rule 50 of the Service Rules, read with appendix V thereof, the foreign allowance for the India based personnel in Kathmandu is Rs. 80 for those drawing basic salary not exceeding Rs. 150, Rs. 110 for those drawing salary exceeding Rs. 150 but not exceeding Rs. 300, Rs. 140 for those drawing salary exceeding Rs. 300 but not exceeding Rs. 500 and Rs. 170 for those drawing basic salary exceeding Rs. 500 but not exceeding Rs. 750. There is nothing on this point in the two agreements Ex. U-218 is the copy of a letter dated the 9th January, 1956 from the Ministry of External Affairs to the First Secretary, Embassy of India, Kathmandu, refixing the foreign allowance of India-based—based non-diplomatic staff and India-based Chauffeurs and Class IV servants in the Embassy of India in Nepal, Kathmandu. The scale mentioned therein is as follows:—

	Married personnel Rs. p.m.	*Single personnel* Rs. p.m.
1. Personnel drawing basic pay of Rs. 500/- per mensem.	210/-	160/-
2. India-based Class IV servants and Chauffeurs.	110/-	80/-

Further it is provided in Ex. U-218 that such members of the India-based staff, other than Class IV servants and Chauffeurs, as are in receipt of basic pay of an amount less than Rs. 150 per month, will be entitled to an additional foreign allowance equal to an amount by which their basic pay falls short of Rs. 150. In para. 27 of its report, the Services Committee stated that the wage structure recommended by it is related to the cost of living in India and it may not be suitable for the staff located at foreign stations such as Karachi, Colombo, Rangoon and Kathmandu. The Committee was unable to visit any of these places and had insufficient data regarding the local conditions. It, therefore, refrained from making any recommendation in this behalf. It asked the Corporation to examine the condition in each foreign place and make suitable adjustments in the wage structure for the employees posted there. It suggested, *inter-alia*, the grant of suitable foreign allowance. In para. 40, the Committee said that there may be other stations in difficult or remote areas served by the Corporation where it may also be necessary to provide appropriate additional wage adjustments because of higher local costs. It added that as the time at its disposal did not permit it to visit such stations and to make local enquiries, it was unable to make any recommendation regarding such places. It may be taken for granted that the foreign allowance fixed by the Ministry of External Affairs in Ex. U-218 is based upon a study of local conditions at Kathmandu. Relying on Ex. U-218, I hold that at Kathmandu for foreign allowance per month for India-based personnel of

the Corporation shall be at the following scale:—

	Married personnel Rs. p.m.	*Single per Rs. p.m.*
1. For employees drawing basic salary not exceeding Rs. 150/-	110/-	80/-
2. For employees drawing basic pay exceeding Rs. 150/- but not exceeding Rs. 300/-	130/-	100/-
3. For employees drawing basic pay exceeding Rs. 300/- but not exceeding Rs. 500/-	150/-	110/-

260. It may be that according to existing scale some single personnel may be drawing more foreign allowance at Kathmandu than what has been prescribed above. Their foreign allowance shall not be reduced, but they will continue to get what they have been receiving so far. The scale prescribed above will, however, benefit the married personnel drawing basic pay upto Rs. 500. The above scale of foreign allowance will be effective from the date from which this award comes into force.

261. Sri Vimadlal stated that the Corporation had closed its operation in Nepal. Sri Buch replied that the Patna-Kathmandu service was still in operation and that some staff of the Corporation was still there. Lastly Sri Vimadlal contended that the employees in Nepal are beyond the jurisdiction of this Tribunal and so their cases cannot be dealt with. Those employees are under the Corporation which is within the jurisdiction of this Tribunal. They are liable to be transferred to any place. They are India-based personnel. I hold that this Tribunal has jurisdiction to deal with the foreign allowance payable to the India-based personnel of the Corporation at Kathmandu.

DEMAND NO. 5—SPECIAL SICK-LEAVE

262. This demand runs as follows:—

"Whether, employees belonging to any of the integrated airlines should be allowed to carry over and enjoy the benefit of special sick-leave wherever admissible under their respective airlines Service rules."

Evidence on the record shows that it was only in the Air Services of India Ltd. that special sick-leave was allowed. The Service Rules of that company, Ex. 221 show that special sick-leave at the rate of 15 days for each completed year of service, subject to a maximum of 12 months during the whole service tenure, was admissible. In the first year's service, however, it was at a lesser rate. In item 23 of the first agreement, it was provided that the employees will be entitled to sick-leave and that such leave will accrue from the date of joining. There is no provision in it about the carry over of the special sick-leave. In item 4 of the second agreement there was a provision for the carry over of only the privilege leave and not of the sick-leave. The claim now put forward thus finds no support from the two agreements. The leave rules of the Corporation are more liberal than those of the Air Service of India Ltd. In the former, casual leave is allowed upto 10 days whereas in the latter it was only 7 days. The Corporation allows sick-leave for 20 days on half pay. It may be commuted to 10 days leave on full pay for each calendar year. The Air

Services of India allowed only 7 days sick-leave in a year. Then the Corporation allows also quarantine leave, accident and disability leave and special leave for injuries caused during the sporting activities, besides the extraordinary leave without pay and allowances. According to rule 132 of the Service Rules, Ex. 7, employees suffering from Tuberculosis or leprosy are entitler to special sick-leave on half basic pay for a period of 30 days for every year of completed service, subject to a maximum of 180 days in the entire service. Taking the overall position, I am of opinion that the demand is not justified.

DEMAND NO. 6—FOREIGN ALLOWANCE TO INDIA-BASED PERSONNEL

263. This demand is as follows:—

"Whether, India-based staff when posted to foreign countries should be entitled to receive foreign allowance irrespective of the nationality of such India-based staff"?

If a person who is resident of India is posted in Ceylon, he gets foreign allowance, but if a Ceylonese is recruited and domiciled in India and posted in Ceylon, he is denied this allowance. Sri Buch stated that the only case which falls in this demand is that of Sri Kulasingham who was domiciled in India and was recruited in India, but was posted at Colombo. Now he has been transferred to Bombay. The expression 'India-based personnel' is defined in rule 6(7) of the Service Rules, Ex. 7.. It means, persons of Indian domicile recruited in India. If Sri Kulasingham was of Indian domicile then he should be paid foreign allowance according to rules. That is a question of fact and the Corporation should go into it. It may be noted that Sri Kulasingham has now been transferred to Bombay. Sri Vimadlal contended that enquiries have been made and the Ceylonee who was paid foreign allowance formerly was not being paid now. If any person who was originally a Ceylonee is now domiciled in India then he should be paid foreign allowance. Sri Vimadlal added that the headquarter has waived the recovery of Rs. 800 paid to Sri De Silva as foreign allowance in the past.

DEMAND NO. 7—TRANSFER OF GRADES 1 AND 2 EMPLOYEES

264. This demand is as follows:—

"Whether, employee in salary grade Nos. 1 and 2 should not, except at their own request, be posted to out stations on transfer?"

Sri Buch stated that only in Hyderabad transfer of employees in grades 1 and 2 were made. The total strength of these two grades in Hyderabad is 120. The total number of employees in these two grades in the whole Corporation would be about 2,000. Sri Rajindra Singh informed that such transfers become necessary when any department is closed at some place. There are only two alternatives then—either the staff may be retrenched or transferred. The Corporation transferred them in order to retain them in service. In Ex. U-223, which is a letter dated the 29th February, 1956, from the Chief Personnel Officer of the Corporation to the Regional Secretary, Hyderabad, the following occurs:—

"We have also agreed, to avoid hardship, that employees in grades 1 and 2 will not be transferred even within the regions as far as practicable."

Sri Buch wants that this principle may be affirmed by the Corporation. Sri Vimadlal stated on behalf of the Corporation that it did not propose to deviate from this principle, subject to what Sri Rajindra Singh stated

in regard to such transfer becoming necessary on the closure of any department at some place. This statement meets the demand of the employees reasonably.

DEMAND NO. 8—GRADE OF DRIVERS

265. This demand is as follows:—

"Whether, drivers being classified under skilled labour should not be placed in salary grade No. 2 specified for semi-skilled labour, and whether all drivers placed in grade No. 2 should be appropriately placed in the next higher grade?"

This matter has already been dealt with in para. 61 *supra* and I decide accordingly..

DEMAND NO. 9—AIR PASSAGES

266. This demand runs as follows:—

"Whether, two free return and 4 concessional return passages per year at 25 per cent. of the schedule fair on any of the Corporation route, subject to load being available should be granted to each employee and whether such passages may be transferred to the employees' wife (or the husband, where the employee is a female) and wholly dependent children or any *bona fide* member of his family. (For this purpose, term family means, wife, legitimate children and step children residing and dependent on him and includes in addition, his parents, sisters and brothers if residing and wholly dependent on him)?"

In item 29 of the first agreement it was provided that two free return air passages—one each for the employee and his wife on the Corporation's route was to be granted annually to every employee. In addition an employee will be granted three concessional return passages on the Corporation's routes per year at 25 per cent. of the scheduled fare. These passages will be transferable to employee's wife, children and dependent parents. Free and concessional air passages will be subject to spare capacity being available. Further it was provided in the agreement that the question of increasing the number of passages will be reviewed after a period of one year. The union wants one more concessional air passage and the expansion of the definition of "family". The union relies upon Ex. 83 which shows that in the Bharat Airways Ltd. and the Airways India Ltd., the definition of family had an extended scope. Sri Vimadlal contended that those companies may have had more extended definition of the term "family" yet the facility of air passages granted by them was much less than what the Corporation gives. The Services Committee in para. 151 at pages 60 and 61 has discussed this point. It has pointed out that while there is strong sentiment in favour of continuance of free and concessional air passages for the Corporation's employees, important considerations had to be faced. For instance, it was unthinkable to allow free passage to the Corporation's employees at the cost of losing a paying passenger. Another difference between commercial air transport on the one hand and railways and shipping on the other, is that while the latter can conveniently accommodate lower-paid employees among the classes of varying comfort in the same or in a number of vehicles moving at the same time, the former in which one aircraft, having almost invariably one class only, moves at a time, cannot make such a distinction. Having

considered all the relevant aspects of the matter, the Committee recommended that, subject to the spare capacity being available:

(a) One free return air passage within India should be granted annually to every employee of the Corporation irrespective of his salary.

(b) In addition, not more than three concessional return air passages per year at 25 per cent. of the scheduled fare should be granted to each employee.

The Committee also recommended that such passages may be transferable to the employee's wife or wholly dependent children.

267. In the Service Rules, published in the Gazette of India on the 8th April, 1955, Ex. U-48, provision was made accordingly. In the Service Rule 173, Ex. 7, instead of one, two free return air passages (one for the employee and the other for employee's wife/husband, as the case may be) have been allowed, in addition to three concessional return air passages. The position thus has been reviewed and additional concession has already been granted. I see no valid ground at present to increase this facility any further.

DEMAND NO. 10—HOLIDAYS

268. This demand is as follows:—

"Whether all employees should be granted 15 days' holidays excluding 3 National holidays or 18 days' including the three national holidays?"

The Services Committee in para. 149 of its report discussed this question and recommended that the 'festival holidays' should not exceed 15, including the three national holidays, *viz.*, Republic Day, Independence Day and Mahatma Gandhi's Birthday. As regards the remaining 12 days, it suggested that they may be fixed so as to include festivals locally considered most important. The same was provided in item 20 of the first agreement. There is no reason to deviate from this agreement. The demand is disallowed.

DEMAND NO. 11—DEARNESS ALLOWANCE

269. This demand runs as follows:—

"Whether, existing scale of Dearness allowance should be reviewed in appreciation of the present high cost of living index and the upward trend in prices of customers goods?"

The Services Committee discussed this question in paras. 29 to 36 at pages 15 to 18 of their report. It linked the dearness allowance with the cost of living index and recommended the dearness allowance at the rate given in Appendix III, varying with the cost of living index. Before nationalization, the employees of different companies received dearness allowance at different rates, not based on any rational general principles. Item 3 of the first agreement, however, provided that the prevailing dearness allowance will be increased by Rs. 3 on all salary slabs. In the second agreement, there is no provision about the dearness allowance. Rule 27 of the Service Rules, Ex. 7, provides for a minimum dearness allowance of Rs. 23 which rises gradually till at the stage of the salary of Rs. 825 it is Rs. 100. Besides dearness allowance, the Corporation pays

also the place allowance according to rule 28, house rent allowance according to rule 29 and transport allowance according to rule 30 of the Service Rules.

270. The financial position of the Corporation has been discussed in paras. 34 to 40 *supra*. The Corporation ever since its inception has been incurring loss from year to year and the total loss so far incurred amounts to Rs. 3,97,82,214. The Corporation inherited an industry which was making substantial loss. There was no surplus fund for purchase of new aircrafts and in fact some of the aircrafts were obsolete. Whereas the ex-airlines companies were receiving subsidies, the Corporation is not receiving any money as subsidy, though it has been receiving loan from the Government. Para. 262 at page 141 of the report of the Air Transport Enquiry Committee, 1950 will show that in most of the other countries, the nationalized air transport industry has been running at a loss. In Canada, the Trans Canadian Airline which is a major airlines operating both the domestic and external services, is nationalised. The company made losses in 1948 and 1949 and being a nationalised industry, the losses had to be borne by the national exchequer. In New Zealand, the New Zealand National Airways Corporation, which is operated by the State, suffered a financial loss of about £ 300,000 per annum. In South Africa, however, the South African Airways, which is owned by the State, made a profit both in 1948 and 1949 of £ 410,000 and £ 359,000 respectively. In Ceylon, Air Ceylon, 51 per cent. of the shares of which are owned by Government, began its operation in 1947 and until December 1948 it had incurred a loss of Rs. 2,63,000. In Ireland, Aer Lingus, which is jointly owned by the Irish and British Governments, suffered a loss of £ 600,000 in 1947-48 and £ 160,000 in 1948-49. In England, British Overseas Airways Corporation and British European Airways, which are both nationalised concerns since 1938 operating as autonomous units suffered a loss of £ 11,000,000 in 1947-48, though it is stated that it has turned a corner. The Corporation contended that it must be allowed to consolidate its position first and, as and when its financial position improves, it will certainly consider favourably the demand of the employees for increase in dearness allowance.

271. The employees referred to various parts of the report of the Estimate Committee and contended that the loss is due largely to faulty management and the employees should not suffer on account of that. Even if every suggestion of the Estimate Committee is followed, the loss cannot be converted into a profit. As Sri Vimadlal argued, the real picture of the Corporation is that if it had been a private organisation, it would be a concern paying no dividends, having no reserves and incurring losses year after year, having over drafts from banks and not being able to pay even interest on the over drafts. The mere fact that the Corporation has monopoly may be a good portent for the future, but the position is uncertain for future and it cannot be cashed in today. The question of dearness allowance was settled on the 1st May, 1955 by the first agreement. When the second agreement was entered into on the 2nd February, 1956, evidently the employees had no grievance so far as the dearness allowance was concerned because this matter was not raised by them. The first question which arises is whether so soon after the second agreement, the dearness allowance should be revised. Sri Buch referred to the judgment of the Bombay High Court in the case of Poona Mazdoor Sabha, LLJ, 1956(II), page 319, in support of the proposition that the agreement can be reviewed, specially when the agreement was not arrived through the conciliation machinery as provided in the Industrial Disputes Act, 1947. I agree that there is no legal bar to the review of the agreement. The question is, however of propriety. The Bombay High Court in the

decision just referred to did not consider it proper to direct the initiation of conciliation proceedings during the period the settlement privately arrived at was to remain in force. Chagla, C. J. observed:—

> "Industrial peace demands that sanctity should be attached to agreement freely arrived at by the parties and if the view is abroad that private agreements have no sanctity whatsoever, then there would be little chance of disputes ending by settlements between the parties. It will indeed be extremely unfortunate from the point of view of labour."

The two agreements were arrived at after discussion extending over a number of days and at a very high level. As their very terms will show, the employees were given full opportunity to raise all points in respect of which they felt grievance. In fact the union wrote a letter of thanks (Ex. 20) to the Corporation appreciating the spirit in which the discussions were carried on. The following from that letter may be quoted:—

> "The spirit with which the issues were discussed and settled will definitely go a long way in improving employer-employee's relationship in this first nationalised aviation industry."

The Employees' Union filed Ex. U-354 to show that in various other concerns, such as, Volcart Bros., Lever Bros., Ciba Chemicals, Air India International etc., the dearness allowance and the total emoluments are higher. The broad fact, however, remains that all those concerns make profits and are not running at loss. Sri Buch referred to National Tile Feroki's case reported in 1956(I), LLJ, page 579. That case hardly helps the point. It lays down that the financial position of the concern has to be taken into consideration in fixing dearness allowance, but not to the extent that the dearness allowance falls below a certain level. After the close of the hearing of this case, however, the Employees' Union submitted a petition alleging that as a result of announcement of interim increase in dearness allowance by the Central Pay Commission, the Life Insurance Corporation of India as well as the Bankers' Association in recognition of the fact that the cost of living has gone up, have granted increase in dearness allowance. As regards the Insurance Corporation, it was stated that there was an agreement between it and the employees as late as in May, 1957. A copy of the order alleged to have been issued by the Insurance Corporation was filed which shows that the Insurance Corporation have allowed an increase of Rs. 5 in the scale of dearness allowance of the employees drawing basic salary of Rs. 51 or more but less than Rs. 251 from the 1st January, 1958. A copy of the letter alleged to have been issued by the Indian Banks' Association to all members of the Association shows that as a gesture of goodwill the Association recommended to the member banks to raise dearness allowance from the 1st January, 1958, payable to their clerical and subordinate staff by one-seventh and one-tenth respectively as provided under the award. A copy of the union's letter was sent to the Corporation. In reply, the Corporation contended that there was no agreement between the Life Insurance Corporation and its employees as stated by the union and moreover, the basic pay scales of the Insurance Corporation were generally lower than those in the Indian Airlines Corporation. It added that the Banking and Insurance business are not comparable with the Air Transport Industry as both of them are financially stable and have been making substantial profits. In regard to the Banks Association, it was

stated by the Corporation that all what has been done is to discharge the obligations under the award. The argument on behalf of the employees is that there is a material change on account of the rise in the cost of living and so the dearness allowance should be reviewed. This point bristles with difficulties. On the one hand, the financial position of the Corporation deters one to add to its financial liability. On the other hand, there is the well known fact that the cost of living has been rising which led the Government of India on the recommendations of the Central Pay Commission to announce an immediate increase in the dearness allowance and this has been followed by the Life Insurance Corporation and the Indian Banks Association and may be followed by other organisations also. Apart from this, the fact of inflation also cannot be lost sight of. As recently one of the labour leaders put it, there is a race between the high prices and wages. High prices lead to demand for higher wages, higher wages lead to inflation which in turn leads to higher prices. This is the spectacle of spiral tendency which we are witnessing today. The Air Transport Industry is now a nationalised industry. Though the Corporation has a distinct juristic personality, it is controlled by the Government. Many of its rules are based upon Government model. The dearness allowance in the Corporation is not linked with the cost of living index, as recommended by the Services Committee, so as to give relief automatically when prices rise, as is the system in several industries in private sector *e.g.* Textile Industry. When the price rises, the worker naturally feels its pinch and so he raises, the demand for increase in dearness allowance. Ex. U-343 is the cost of living indices from 1954 to 1957. It shows that in February, 1955 the cost of living index was 361·4 whereas in August, 1957 it was 441·8 (base year 1939=100). The Corporation has filed a copy of the letter from the Director, Labour Bureau, Simla, Ex. 80 which shows that the All India Consumers Price Index Number for working class has risen from 96 in 1955 and 105 in 1956 to 114 in September, 1957 (base year 1949=100). Page 519 of the Indian Labour Gazette of November, 1957 will show that in many other countries abroad also there is the same tendency of rise in the price index. Being a nationalised industry, I cannot see how the demand of the employees for increase in dearness allowance can be refused when the Government of India and some State Governments also have granted such increase at least to their lower paid staff.

272. From the Government of India, Ministry of Finance's office memorandum No. F.9(18)Est.(Spl.)/57, dated the 27th December, 1957, it appears that an additional dearness allowance of Rs. 5 has been allowed to all Central Government employees who are at present eligible for dearness allowance at the rate prescribed in Finance Ministry's office memorandum No. F.9(4)-EII/57, dated the 12th June, 1951 and are drawing basic pay not exceeding Rs. 250 per month. As a measure of marginal adjustment, Government has sanctioned until further orders an addition of Rs. 5 per month to the dearness allowance admissible to such of the employees as are drawing basic pay between Rs. 251 and Rs. 300 per month. The rate of dearness allowance contained in paragraph 2 of the Finance Ministry's office memorandum No. C(5)-EII/53, dated the 9th May, 1953 is to remain unchanged. This order, however is not applicable to certain class of employees mentioned in paras. 5 and 6 of the Finance Ministry's office memorandum, dated the 27th December, 1957. They include such of the employees as are on daily wages or piece rate system and are not in receipt of dearness allowance at the rate mentioned in the office memorandum, dated the 12th June, 1951.

273. On the basis of the Finance Ministry's office memorandum, dated 27th December, 1957, I allow, as a measure of interim relief, an additional amount of Rs. 5 in the dearness allowance of the employees of the Corporation drawing basic pay not exceeding Rs. 250 per month till such time as the All India Average Working Class Consumers Price Index Number, notified by the Director of Labour Bureau, Simla is brought down to the 1955 level. When it reaches that level, the addition made to the dearness allowance by this award will be withdrawn. In this way the sanctity of the agreement will be maintained and at the same time the employees will have the relief on account of rise in the cost of living. Marginal adjustment shall also be made so that the total emoluments of the employees receiving basic pay exceeding Rs. 250 are not less than those received by the employees whose basic salary is Rs. 250 or less and for this purpose an addition in the dearness allowance may be made even in the case of those employees whose basic pay is more than Rs. 250.

274. The Office Memorandum of the Finance Ministry, dated the 27th December, 1957 allows the addition to the dearness allowance from July, 1957. On the other hand the Life Insurance Corporation of India has allowed it from the 1st January, 1958 and the Indian Banks Association also has recommended it from that date. These two bodies are business organizations which is also the character of this Corporation. Its present financial position is not good and so I decide that the increase in the dearness allowance will take effect from the 1st January, 1958. The employees should also make some sacrifice for this nationalized industry.

DEMAND NO. 12—TEMPORARY STAFF

275. This demand is as follows:—

> "Whether, recruitment of temporary staff under 6 months period should be deemed to be recruitment on regular vacancies and whether such recruited staff should be eligible to all benefits applicable to permanent staff?"

Provisions in regard to temporary employees appear in item 44 of the first agreement and in item 21 of the second agreement. They are quite adequate and there is no justification to give any additional benefit. This demand is disallowed.

DEMAND NO. 13—LATE ATTENDANCE

276. This demand is as follows:—

> "Whether employees reporting for duties either in the first half or in the 2nd half of the working day should not be shut off, and whether their absence should be debited against their leave account."

It is stated by the Employees' Union in its written statement that in the former airlines companies, a provision as claimed in this demand, existed and even today it exists in the Air India International Corporation. At the last hearing of the case, Sri Vimadlal stated on behalf of the Corporation as follows:—

> "At the suggestion of the Tribunal the Corporation is agreeable to this demand provided the same is being done in actual practice by the Air India International. In any case the award on this demand should not be retrospective."

This assurance sufficiently meets this demand and I decide accordingly.

DEMAND NO. 14—EMPLOYMENT OF THE EX-EMPLOYEES OF THE EX-AIRLINES COMPANIES

277. This demand is as follows:—

"Whether ex-employees who were victimised by the former airline companies and who were subsequently permitted by the Government to secure fresh employment in the Corporations with particular reference to ex-employees of former Air India Ltd., Bombay be absorbed in Indian Airlines without delay against sanctioned vacancies. Similarly, whether ex-employees of the former airline companies at Calcutta who were interviewed and selected for appointments but subsequently not taken should be appointed in the posts for which they applied and were interviewed? (Names of such ex-employees have already been furnished to the Corporation earlier)."

The second part of this demand is covered by the discussions under demand 20(a) of part I and in this connection paras. 45 and 173 *supra* may be seen. I decide accordingly.

278. As regards the first part of this demand, the union filed Ex. U-355 to show that cases of the 4 ex-employees for whom appointment was claimed by it on the 27th October, 1955. As this list was filed very late, the Corporation could make no enquiry in regard to their cases. The ex-employees of the ex-airlines companies are free to apply for vacancies in the Corporation and, other things being equal, they should be given preference over outsiders.

279. Sub-section (2) of section 20 of the Air Corporations Act, 1953 provides that the Central Government may direct the Corporation to take into its employment any employee, who was employed by an ex-airlines company prior to the 1st July, 1952, and was discharged from service on or after that day, for reasons which in the opinion of the Central Government appear to be inadequate for the purpose. The Corporation states in the supplementary written statement, dated the 18th November, 1957 that in pursuance of this provision it asked the aggrieved employees by a press note, dated 16th September, 1953 to submit their representations. These representations were considered by Sri W. R. Puranik, the Chairman of the Services Committee and were disposed off by him. In the second agreement it is recorded that the Chairman said that there was no bar to the recruitment of the ex-airlines' employees, but that each case was to be considered on its own merit by the appointing authority. The Corporation states that the ex-employees can be appointed in accordance with the Recruitment and Promotion Rules which do not discriminate against them. The Corporation adds that the ex-employees have already been sufficiently safeguarded and it has implemented the agreement. I agree with this.

DEMAND NO. 15—TRANSFER FROM DIFFICULT STATIONS

280. This demand is as follows:—

"Whether employees who have already completed two years in difficult stations such as in Assam, Nepal, Srinagar, Darjeeling, Nagpur etc. should be granted a transfer to some other station

on the request of such an employee. Whether such employees should not remain posted at such difficult stations for a period in excess of 2 years but less than three years, i.e. whether before the expiry of the third year should he be granted the transfer requested for, if not earlier.

Provision for transfer is contained in item 27 of the second agreement. It provides that in Assam (except Gauhati and Agartala), Nepal, Srinagar, Darjeeling and Nagpur, employees who have already completed two years of service should be granted, as far as possible, a transfer to some other station on the request of such an employee. Such employees will be eligible for the privileges and concessions normally granted on transfer. The demand is wider in its scope than the agreement. It does not exclude Gauhati and Agartala in Assam. Secondly the word 'etc.' in the demand makes it vague.

281. In the supplementary instructions to rule 11 of Ex. 7, it has been laid down that the employees posted at places enumerated in item 27 of the second agreement shall be eligible for transfer to some other station after completing two years at such station. It adds, however, that such transfer cannot be claimed as of right, but will be granted when applied for by the employee, subject to administrative convenience. Srf Buch complained that despite this supplementary instruction, the employees who want to be transferred from difficult stations on the completion of two years' service have not been transferred to other stations and gave the instance of Sri Jai Shekhar at Nagpur. Sri Vimadlal stated that the union may write to the Corporation about the persons who want their transfer and it will try to accommodate them. The words 'as far as possible' appearing in item 27 of the second agreement imply that administrative convenience was in the minds of the parties. The Corporation shall carry out the assurance given by it and try to accommodate the employees as far as possible according to item 27 of the second agreement.

DEMAND NO. 16—PLACE ALLOWANCE

282. This demand is as follows:—

"Whether Nagpur and Bangalore should be granted adequate place allowance not less than those admissible to Hyderabad?"

In item 4 of the first agreement, the stations where place allowance is to be paid are mentioned. Nagpur and Bangalore do not figure therein. In the second agreement, there was no demand of place allowance for these two stations. The Services Committee also did not recommend any place allowance for these two places. There is no justification for the grant of place allowance for Nagpur and Bangalore.

PART III

DEMAND NO. 1—APPOINTMENT

283. This demand is as follows:—

"Whether appointments made after the nationalisation, which were neither advertised in the newspapers nor secured through the Employment Exchange should be reviewed and declared void, if there is any irregularity and whether persons so affected should be offered such grades that the oldest staff are not superseded?"

Sri Buch stated that after the nationalization about 1,000 appointments were made by the Corporation without any advertisement. He referred to Exts. U-75 and U-154 to show the instances of irregular appointments made by the Corporation. He did not challenge the discretion of the management to make appointment, but contended that the discretion should be exercised justly. Relying upon item 29(a) of the second agreement, he claimed that all the appointments should be reviewed. While in the demand there is claim that such fresh appointment should be declared void, at the hearing of the case, he stated that he did not want that the services of the persons already appointed should be terminated, but that the cases of the existing employees should be heard and if they are entitled to promotion, they should be promoted regardless of the fact that it would involve increased expenditure in the Corporation.

284. Clause (a) of item 29 of the second agreement provides that "all employees recruited by the Corporation, except those who have been made permanent, in accordance with the current rules shall be treated as temporary employees for the time being and this will be without prejudice to the claims of the existing employees for promotion to higher grades".

285. Sri Vimadlal stated that in the majority of cases, fresh appointments were made after advertisement. He argued that there would be utter confusion if the demand is allowed. The union does not want the services of the persons already recruited to be terminated, but wants that the existing employees should be promoted. If this is done, there may be civil action by them and great heart-burning will result. Further, he pointed out that without giving a hearing to the persons likely to be affected prejudicially by the Corporation, this demand cannot be given effect to. He pointed to item 21(b) of the second agreement according to which on completion of one year's service the temporary employees become eligible to all the benefits to which permanent employees are entitled and argued that the Corporation is "between the devil and the deep sea". On the one hand, in regard to the employees who are temporary, the union wants that they should be made permanent as soon as possible, on the other hand, the union, under this demand, wants that even those who have been made permanent be made temporary.

286. Sri Y. N. Verma stated that in the beginning when the Corporation took over the business, there were no recruitment rules. Within a year, *ad hoc* selection boards were set up. In 1955, regular Selection Boards were set up in all the areas, and it was provided that advertisement should be made as far as possible and the existing employees of the Corporation should be informed of the vacancies. He stated that in 1956, regular recruitment rules were framed and since then appointments and promotions are being made according to them. Dealing with the illustrations given in Ex. U-154, Sri Verma stated that Sri Bahadur was appointed after advertisement. His services were, however, terminated about a month ago, not because he did not possess the qualification, but because his appointment was not considered regular. Sri N. N. Dey, according to Sri Verma was selected after advertisement through regular Selection Board, having been found to be the best candidate. He is still in the employ of the Corporation. The same is the case with Sri Teja Singh. Dealing with the cases mentioned in Ex. U-75, Sri Verma stated that Sri J. P. Mathur was appointed on the 3rd October, 1955, after selection through a Selection Board. He had

experience of stores work and had worked in B.O.A.C. As regards Sri Kanti Prasad, it was stated that he is a permanent Class I employee of the Government of India and is on deputation with the Corporation. His term expires in 1958. Sri Verma further stated that Mrs. Sinha was appointed in 1954 in the headquarter office as a Receptionist-*cum*-librarian. Early in 1956, she was promoted as Publicity Officer before promulgation of the recruitment and promotion rules. She was also associated with the Chief Public Relations Officer. She was in grade 5 at that time. then promoted to grade 7 and now she is in grade 12. He said that she possessed high qualifications. A copy of her application, Ex. 84 was filed to show her qualifications. She is an M.A., B.Ed. and possesses experience of social service. When she was appointed, no advertisement was made because there were no rules of recruitment then. As regards Sri Puri, Sri Verma stated that he was appointed as Transport Officer in December, 1955. Later a vacancy arose for the post of Transport Officer in Bombay. An advertisement was made in which applications from the existing employees were also invited, but none of the existing employees was found fit and Sri Rajani, an outsider, who was an employee of the Bombay Transport Department, was appointed. In regard to Sri Iqbal Krishna, Sri Verma admitted that there was no advertisement when he was recruited as recruitment rules did not exist then, but his appointment was made through a Selection Board. In April, 1956, a vacancy arose for the post of Catering Officer at Bombay and advertisement was made. Applications from the existing employees also came in, but none was found suitable by the Selection Board and an outsider was appointed. As regards Sri K. K. Sandle, Sri Verma stated that he was fitter in Gangapur Sugar Factory on Rs. 145 per month. On the 2nd December, 1954, he was appointed in the Corporation at Rs. 135 per month.

287. Sri Verma stated that immediately after taking over the business, about 600 employees had to be sent to the Air India International and there was no time to go through the process of advertisement as the services had to be carried on by the Corporation. Immediate appointments, therefore, had to be made. He stated that the number of fresh appointments after the nationalisation is about 2,500 upto date and to review all these appointments would create great confusion. He said, however, that after the promulgation of Recruitment and Promotion Rules, the appointments are being made according to them. As far as possible, chances are being given to the existing employees. They have been taken in posts reserved for direct appointments. Now when vacancies occur, outsiders as well as existing employees apply for them and appointments are made on merits and seniority is fixed. He stated that there may have been mistakes in the past, but they were the mistakes of discretion and cannot be undone now.

288. Sri Buch, however, claimed that under item 29(a) of the second agreement, this demand must be conceded to.

289. In the first place, there is inconsistency between this demand which requires the fresh appointments to be declared void and demand no. 12 of Part II which requires that all temporary staff under six months' period should be deemed to be "recruitment on regular vacancies". Then. there is vagueness in this demand. By a general order, the union wants that appointments of such a large number of persons should be declared void. A complete list of persons likely to be affected prejudicially by such an order has not been filed and no hearing has been given to them. It would be unfair to pass any order adversely affecting

any employee, without giving him a hearing. On the other hand we have clause (a) of item 29 of the second agreement. That can be given effect to only to the extent that such of the freshly recruited employees as were not made permanent on the date by which the Central Government referred this dispute to this Tribunal shall continue to be temporary and their cases will be reviewed by the Corporation as expeditiously as possible, with a view to see if the claim of any existing employee has been prejudiced by fresh recruitment. If so, relief should be given to the existing employee who has been adversely affected. In judging this matter, the qualifications and experience of freshly recruited employees and those of the existing employees who claim to have been adversely affected by fresh recruitment shall be compared. If the qualification and experience of a fresh recruit are superior, then his appointment shall not be interfered with. If the qualification and experience of the two candidates are equal, then preference shall be given to the existing employee and he should be granted necessary relief. The same will be the position if the qualification and experience of the existing employee are superior to those of the new recruit. In every case, the new recruit whose case is under consideration should be given hearing.

289. In giving effect to clause (a) of item 29 of the second agreement, it is not possible to go beyond what has been indicated above because the new recruits who have already been confirmed before the date of the order of reference cannot be disturbed now. That is an accomplished fact and cannot be undone.

DEMAND NO. 2—TRANSFER OF WORKLOAD

290. This demand is as follows:—

> "Whether workload which is normally handled by the Corporation should not be given over to outside agencies without making provision for and continued employment of workers who perform the work hitherto?"

Shri Narendra, President of the Union stated that in Hyderabad there was Motor Transport Section where motor vehicles from Airports and South India used to come for overhauling and repairs. That section was closed and the work was given to private companies with the result that some employees were transferred to other places. The second instance is of overhaul of Aircraft Engines at Calcutta, Hyderabad and Delhi. This was transferred to Hindustan Aircraft Ltd. The third case is that of A.F.C. 240 employees in the A.F.C. were maintaining aircrafts of the Indian Air Force, in accordance with the contract. That contract was not renewed by the Corporation with the result 240 employees were given termination notices. Later they were taken back, with the exception of two, as new entrants. It was stated that in Hyderabad a well established catering organisation of the Corporation was handed over to a private contractor.

291. Sri Rajindra Singh stated that the Motor Transport Section was shifted from Hyderabad to Madras because it was more centrally located and it was not the intention of the Corporation to give that work to any private agency. As regards the second example, the decision was taken to transfer some work to the Hindustan Aircraft Ltd. as it is a national undertaking and had surplus capacity. It was also stated that the Corporation was having difficulty with the staff because they were not doing overtime and were going slow. The Corporation had accumulation of work at that time. In regard to 240 workers of A.F.C., it was

stated that they had a special contract according to which their services were liable to be terminated on the termination of the contract. He added that on account of the weather conditions in Hyderabad, and bumpy aircrafts, the passengers did not take food inside the plane during the flight. It was necessary to serve them food on the ground only. The Airport restaurant licenced by the D.G.C.A. alone can supply the food.

292. In the course of discussion on this demand, Sri Vimadlal stated:—

"As far as possible we have no intention to retrench employees because of transfer of workload as is indicated in the demand. However, there can be no rigid undertaking for all times so far as the retrenchment is concerned, because they would be regulated by the Industrial Disputes Act. In each case retrenchment must depend upon the exigencies of the situation. Moreover, the very fact that the legislature has provided in certain sections about retrenchment compensation, shows that it was postulated that there can be cases of retrenchment. Giving up of workload is a policy matter and will be decided on business principles. Nevertheless, the Corporation will try to avoid retrenchment as far as possible."

The above undertaking is reasonable and I decide accordingly.

DEMAND NO. 3—WORKING HOURS

293. This demand is as follows:—

"Whether all staff, clerical and technical should record their timings and be paid overtime for work beyond their respective scheduled hours?"

Rule 37 of the service rules, Ex. 7, provides that "all employees in grades 1 to 12, irrespective of whether or not they are governed by the Factories Act who are classified under category (b) of Rule 187 shall be eligible for Overtime Allowance at double the ordinary rate of wages for any work they are required to do beyond their daily scheduled hours of work". Rule 38 defines the term "wages". For employees not governed by the Factories Act, it means 'basic pay, personal pay and dearness allowance.' For employees governed by the Factories Act, it means, in addition, 'place allowance, transport allowance, house rent allowance, machine allowance, washing allowance, licence allowance and duty allowance'. Category (b) of rule 187 means those employees who have 44 hours of work per week including a daily break of half an hour.

294. Item 14 of the first agreement allows overtime allowance only to the employees observing 44 hours per week. The same is provided in item 14 of the second agreement. For working hours, the provision is in item 33 of the second agreement. It is admitted by Sri Buch that this demand is not covered by the agreement. He relied, however, upon the decision of the Labour Appellate Tribunal in the Bank Dispute and upon the Central Pay Commission report. There is a distinction between the facts of this case and of those in Bank Disputes case. Here we have the agreement entered in so recently as in February, 1956 between the employers and employees. There was no such agreement in the Bank Disputes Case. I see no valid ground to depart from the terms of the agreement. The Bank Disputes Case was already decided when these two agreement were entered into, and no reliance upon it was placed by the employees.

295. It was also complained that sometimes a substitute 'day off' is not given under rule 186 of Service Rules, Ex. 7 when a clerk is called to work on Sunday on the ground that the rule gives discretion to the Corporation. Sri Y. N. Verma stated that he had no objection to the substitution of word 'shall' for the word 'may' in rule 186 of the Service Rule. The Corporation shall make the necessary amendment as soon as possible.

DEMAND NO. 5—DEMOCRATIC FUNCTIONING OF THE UNION

296. This demand is as follows:—

"(a) Whether adequate office and telephone facilities should be provided to the Union?

(b) Whether members of the Regional and General Councils should be given extra leave and passage facilities for attending their annual meetings?

(c) Whether Central Executive Members should continue to get extra leave and passage facilities as in 1953, 1954 and 1955?

(d) Whether leave and Transport facilities should be given to the Office Bearers of the Union for meeting the Corporation Authorities, Government Labour Authorities and for pursuing Labour dispute cases legally?"

A preliminary objection is raised by the Corporation that the facilities to be granted to the union for its functioning cannot be the subject matter of an industrial dispute under the Industrial Disputes Act and this Tribunal has, therefore, no jurisdiction to deal with them. I see force in this contention. It will be seen from the definition of the 'industrial dispute', contained in section 2(k) of the Industrial Disputes Act that it must be "connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person". The claim made under this demand does not relate to the employment or non-employment or the terms of employment or with the conditions of labour. This demand is, therefore, not justifiable by this Tribunal. Sri Buch, however, argued that as this matter is covered by the agreement, therefore, it is an industrial dispute. None of the two agreements contain any provision in regard to the subject matter of this demand.

297. Nevertheless the facilities provided by the Corporation for the union activities may be stated here. Sri Y. N. Verma stated that the Corporation has allowed telephone facility to the union at Bombay and Madras. Whenever union representatives are called to the headquarter or to the area headquarter, then they are treated as on duty and they are given passage facilities, daily allowance etc., according to rules. A fixed number of free passages are given for the annual meetings of the union. No extra leave and free passage facilities are given to the Central Executive for their annual meetings. The practice so far has been that either the Corporation calls them or the union writes to the Corporation and if it decides to call them, then only free passage facility is given to them. Sri Verma added that whenever there is an occasion, the union may write to the Corporation, it will consider such requests on merits and will pass suitable orders. Due to acute shortage of office accommodation, it is not possible for the Corporation to provide better accommodation to the union than is being already provided.

DEMAND NO. 6—CHANGE OF WORK

298. This demand is as follows:—

"Whether employees accustomed to a higher skill or nature of duty should not be compelled to perform other work as would humiliate him?"

The Corporation states in its written statement that it does not give any work to an employee which would be humiliating. Sri Buch contended that when a person is employed to do a particular type of work, he has right to say that he should be called upon to do only such work. He added that if a mechanic is called upon to do the work of a clerk, of which there are instances, then the mechanic will lose his skill and his market value will fall. He stated also that there are examples where cooks were called upon to work as bearers, kitchen boys as loaders, electricians as daftaries and mechanics as salvage section hands. If what has been stated by Sri Buch is correct then, the Corporation should try to avoid it so far as possible, subject to the general principle that in times of emergency, no employee whatever may be his position, should refuse to do any work that may be necessary in the interest of life and property and the maintenance of the Air Transport. There is dignity in labour and no one should feel humiliation by doing any particular type of work.

DEMAND NO. 8—DISCIPLINARY ACTION

299. This demand is as follows:—

"Whether cases involving punishments like dismissals, removal, discharge, demotion, suspension, and stoppage of increment be examined by a Board of Enquiry in which a representative of the Workers is included as was the practice before nationalisation and also for a period after that before any punishment is imposed?"

The Corporation submits that punishments like removal, demotion, suspension, stoppage of increments etc. is only given by the competent authority after fulfilling all the procedural requirements in accordance with the Corporation's service rules, concerning Discipline and Appeal, which are very exhaustive. They provide ample opportunity to the staff to defend themselves including advice and assistance from any other employee of the Corporation. It states that inclusion of workers' representative in such proceedings is not justified and is opposed to practice. A right of appeal is provided in the rules and there is a provision for review thereafter. It contends that there is no justification for this demand.

300. There is force in the Corporation's contention. Even in the Government offices where there is so much security of tenure for employees, representative of employees are not associated in the Board of Enquiry. When the employees are given ample opportunity to defend themselves and have the right to appeal and review thereafter, I see no good reason to allow this demand.

DEMAND NO. 9—MISCELLANEOUS

301. This demand is as follows:—

"(a) Whether one full time employee should be earmarked for working out liaison with the Employees State Insurance Scheme?

(b) Whether one full time employee should be earmarked for dealing with queries on deductions and their early refund, if wrongfully made?

(c) Whether adequate protection and isolation should be provided in case of infectious diseases?

(d) Whether fuel allowance to be given to all staff at Srinagar?

(e) Whether office and other facilities should be provided for the Employees Thrift Society?

(f) Whether adequate canteen facilities should be provided at Palam."

In regard to clauses (a) and (b) of this demand, a preliminary objection is raised that they do not constitute an industrial dispute. I agree with this. They relate to the function of the management and not to "the employment or the non-employment or the terms of employment or with the conditions of labour". Nevertheless Sri Rajindra Singh stated that if the union or any employee brought to his notice any concrete instance about the difficulty in respect of the matters contained in these two clauses, he would see that they are attended to.

302. In regard to clause (c), Sri Lobo stated that the employees suffering from infectious diseases are not given quarantine leave. A perusal of rule 139 to 141 of Ex. 7 will show that when an employee himself suffers from infectious diseases, then he is entitled to normal casual, sick or privilege leave at his credit and it is only when any member of his family suffers from infectious disease that quarantine leave is granted. This is a reasonable provision and I see no valid ground to make any variation in it. It was, however, complained by Sri Narendra, President of the Union that sometimes employees suffering from measles go to the office and spread the infection. He asked that measles should be included in infectious diseases. Rule 140 shows that measles does not appear there. It is well known that measles is an infectious disease and I hold, therefore, that measles shall be included in rule 140 of the Service Rules.

303. As regards clause (d) of this demand, Sri Buch stated that the fuel allowance was not paid to the employees who were on temporary transfer at Srinagar or who are locally employed and claimed this allowance for them. Sri B. D. Saxena stated that when a person is transferred temporarily to Srinagar he gets daily allowance and the daily allowance for Srinagar is 50 per cent. more than at other places. That covers the fuel allowance. As would appear from the written statement dated the 13th November, 1957 filed by the Corporation, the concession of fuel allowance has been extended to locally recruited staff with effect from 23rd August, 1957. I am of opinion that persons on temporary transfer at Srinagar should also get the fuel allowance. The daily allowance is paid to them because they have to maintain two establishments. I decide accordingly.

304. As regards clause (e) of this demand, it does not raise any industrial dispute as it is not related to "the employment or non-employment or the terms of employment or with the conditions of labour."

305. As regards clause (f) of this demand, the Corporation says that the question of providing more accommodation for canteen at Palam is under the active consideration of the Director General of Civil Aviation who is the appropriate authority for providing building amenities at the Airports. Having regard to the distance of Palam, it is necessary that the

Corporation should take steps to provide canteen facilities to its employees there. It should press the matter before the Director General of Civil Aviation and if he does not provide canteen facility, then the Corporation should provide it beyond the precinct of the aerodrome as close to it as possible. This should be done as expeditiously as possible.

306. All the demands as contained in the order of reference have now been dealt with. Sri Y. Kumar, learned counsel for the pilots and radio officers also addressed the Tribunal and the points urged by him may now be briefly dealt with. He stated that the present reference was on the basis of the demands made by the Air Corporation Employees' Union. They fall into the following two categories:—

(1) those which are covered by the agreements entered into by the Employees' Union, and

(2) those in respect of which there was no agreement with that union.

In regard to the demands covered by the agreements with the Employees' Union, Sri Y. Kumar stated that they should apply only to the members of that union unless the pilots and the radio officers accepted them. He added that the pilots and the radio officers are concerned with the following demands:—

PART I.	Demand No. 2	Categorisation.
	Demand No. 13	Sick-leave.
	Demand No. 21	Provident Fund.
	Demand No. 22	Gratuity.
	Demand No. 25	Privilege Leave.
	Demand No. 32A(b)	Service Rules.
	Demand No. 32A(d)	Works/Joint Committees.
	Demand No. 32A(i)	Interpretation of agreements and service rules.
PART II.	Demand No. 11	Dearness allowance.
PART III.	Demand No. 8	Disciplinary action.

In respect of other demands the pilots and radio officers have no concern.

307. As regards the demands relating to categorisation, privilege leave, dearness allowance and gratuity, Sri Y. Kumar adopted the arguments of Sri Buch. In respect of sick-leave he contended that the pilots and the radio officers should be allowed to accumulate it upto 45 days. This claim is beyond the terms of reference as contained in demand No. 13 and so is not cognizable.

308. As regards Provident Fund, he wanted that both the labour representatives of the Provident Fund Board should be from the union categories. This has already been dealt with in discussions on demand No. 21.

309. Sri Kumar wanted to give instance of breach of service rules in the case of pilots and radio officers. He relied upon clause (h)(ii) of demand No. 32A of Part I. That clause asks for rules, instructions or order unilaterally issued by the Corporation adversely affecting the rights and privileges of the employees to be declared as rescinded and as having

no effect. It does not deal with the breach of any service rules. This claim of the pilots and radio officers does not fall within the terms of reference.

310. Dealing with the disciplinary action, Sri Kumar referred to Ex. P-7 to show that in the Indian National Airways there was a practice of associating representatives of workers in the Board of Enquiry. I have gone through that exhibit and it does not support the contention that representatives of workers were so associated. No rule of that company has been filed to prove this. Then it was urged that this is a nationalised industry and the principles followed by the industries in the private sector should not be applied to this industry. While eventually it may be desirable to associate workers' representative in enquiries relating to disciplinary matter, the time has not arrived when this step may be taken. The workers have to show a spirit of accommodation, a sense of absolute impartiality and a feeling that they are prepared to see the point of view of the industry and the employer. Ex. U-219 has also been relied upon by Sri Y. Kumar. It is an order passed by the Industrial Tribunal, Delhi in the case of Sri N. N. Malik. I have gone through that order. Far from supporting the employees' case, it goes against it. It shows that the contention on behalf of Sri Malik was that there was a violation of natural justice inasmuch as the representative of workers was not associated in the enquiry against him—a practice alleged to have been prevailing in the Indian National Airways. The Tribunal remarked that the Standing Orders of the Indian National Airways did not provide for the association of the representatives of labour to constitute an enquiry.

311. As regards gratuity, Sri Kumar contended that section 20 of the Air Corporation Act is not governed by section 22. According to him, section 20 embodied certain terms of statutory contracts and section 22 relates to the liabilities of the Corporation to the third party. He referred to section 17(3) and (4) of the Act and argued that the absence of the words "subject to the provision of section 22" shows that the two sections are not inter-related. He illustrated his point by saying that if the workers were to be paid some arrears which were not disclosed by the ex-airlines company then it did not mean that the Corporation is relieved of that liability. Section 20 enacts continuance of the service conditions of the workers of ex-airlines companies until they are "duly altered" by the Corporation. Section 45(2)(b) authorises the Corporation to make regulations for the "terms and conditions" of officers and the employees of the Corporation. The employees raised the question of gratuity both at the time of the first and the second agreement, but that was not conceded to by the Corporation. On the other hand when the Corporation made the service rules, it provided for only one retirement benefit, *viz.*, Contributory Provident Fund. It did not provide for the gratuity. By necessary implications, it follows that the gratuity scheme in force in the two ex-airlines companies was abandoned by the Corporation and so far as the service conditions relating to gratuity scheme were concerned, they were "duly altered".

312. After the close of the hearing, the pilots and radio officers submitted written arguments in regard to gratuity. A copy of the same was forwarded to the Corporation and they sent a reply to it. In the written arguments quotations have been made from the reports of the Fair Wages Committee and the Central Pay Commission and from the observations of Justice Rajadhyaksha in the trade dispute between the Post and Telegraph Department and its non-gazetted employees. These quotations bear on the aspect of minimum wage which is the least amount that a concern must pay irrespective of capacity. This can obviously have no application

to the question of gratuity and particularly in the Corporation where the terms and condition of service and the total emoluments of the workers are not only above the minimum but fair and comparable with the scale prevalent in other industries. It has been held by the Labour Appellate Tribunal that the second retirement benefit would be provided only if there is capacity at present and assured continued financial stability for future. The quotation from the Post and Telegraph award is beside the point as it refers to surplus of income over expenditure which go to Government. In the case of this Corporation, there has been no surplus so far. In para. 134 of its report, the Services Committee discussed the question of gratuity and observed that in the present state of Corporation's economy, adoption of a scheme of gratuity was not feasible. It recommended that when the situation improved, the Corporation should consider the grant of gratuity to the retiring employees. The financial position of the Corporation has not materially improved. It is incurring loss every year even now. The present is not the stage for the introduction of the gratuity scheme.

313. The conditions under which both retirement benefits—contributory provident fund and gratuity—should be granted have been fully discussed in the case of Arthur Butler & Co. Ltd., *Vrs.* Arthur Butler Workers' Union in 1952, II LLJ, page 29 and Jeewan Lal (1929) Ltd., and Crown Alluminium Works *Vrs.* their clerical employees (1956-57) Indian Factories Journal page 416—1957 I LLJ, 323. It was stated on behalf of the pilots and radio officers that having regard to the directive principles of the State policy, as embodied in the Constitution, gratuity should be allowed. Section 9 of the Air Corporations Act gave the directive to the Corporation that in carrying out its duties, it shall follow business principles. Business principles dictate that the Corporation should institute the gratuity scheme only when it has the capacity to incur this financial liability.

314. The question of costs also requires consideration. The parties were represented by lawyers and all of them incurred cost on this account. The employees' Union made an application for the award of Rs. 15,000 as cost irrespective of the results of the case. On the 17th July, 1957, before the hearing of the case started, the union made an application saying that the record of the case was so heavy and the documents which required to be gone into before the statements of the case could be written, ran into a few thousand, that it was well-nigh impossible to prepare the case without leave being granted to a few important union officials numbering five. It prayed that necessary instructions might be issued to the Corporation to allow leave with pay to a few union officials. The Corporation opposed the prayer and relied upon the decision of the Supreme Court in the Punjab National Bank Ltd., *Vrs.* Industrial Tribunal, Delhi and others, reported in 1957, I, LLJ, page 455. In that case the Delhi Tribunal had ordered that the representatives of the union of the bank employees who put in appearance in the Tribunal from stations outside Delhi should be paid 2½ II class railway fare and Rs. 10 per day as halting allowance by the management of the bank. The order was held by the Supreme court invalid. In this case, however, the union by its application dated the 17th July, 1957 had asked for only facility of leave to enable it to prepare the statement of the case. There was no request for the grant of any special leave to such officials. I, therefore, directed that if the officials named by the union had any leave due to them in their leave account, the Corporation should grant it and that it would not put the Corporation to any extra expense. On the first date of hearing of the case, the Employees' Union made an application that the Corporation may be direct ed to treat the six employees mentioned in the application on duty during the period their presence was required at the places where this Tribunal was holding sessions and to allow them usual passage facilities or train

fare and daily allowance to which they would be entitled under Chapter VII of the Service Rules. The Corporation while maintaining that though as a matter of right the union was not entitled to what it claimed, stated that as a gesture of good-will and to maintain good relationship it agreed that all the six representatives would be marked as on duty on the days of actual hearing dates and also during the time taken for their journey to and from. Besides, facility of air passage was also agreed to be given both ways, provided there was accommodation, otherwise II class railway fare would be given both ways. Daily allowance at the flat rate of Rs. 10 per day during the days of halt was also granted by the Corporation. The Corporation made it clear that this should not be taken as a precedent for future. Sri Buch agreed to the terms offered by the Corporation and assured that no misuse of facilities given will be made by the persons concerned. The representatives of the other three unions also claimed the facilities which the Corporation had conceded to the Employees' Union. The Corporation agreed to grant the same facilities to one representative each of the three unions. At the last hearing Shri Vimadlal stated that besides the facilities mentioned above, the Corporation had given free transport to the employees. At Lucknow the Corporation provided buses from the Roadways. He says that all this has cost over Rs. 6 or 7 thousands to the Corporation, besides the cost of free passages or railway fare. It was contended that in industrial matters the cost is not usually allowed specially when the award is partly in favour and partly against the parties. As regards the Bank Disputes Case, it was pointed out that the hearing went on for about five months and even then the cost awarded by the Labour Appellate Tribunal was much less than what it claimed by the union in this case. The total number of days on which the hearing of this case took place was 32. The union which claims cost of Rs. 15,000 over and above about Rs. 6 or 7 thousands, already defrayed by the Corporation, has not filed any receipt to show the fee paid by it to its lawyer. The decisions on the various demands put forward by the union will show that partly they have gone in favour of the Corporation and partly in favour of employees. That being the position and having regard to the fact that the Corporation has already incurred an expenditure of about Rs. 6 or 7 thousands for the union besides the cost of passage and railway fare, I hold that the parties should bear their costs.

315. Before closing this award, I desire to place on record my appreciation of the calm atmosphere maintained by the parties throughout the hearing. While each party put forward its case as forcefully as it could, the calmness of the atmosphere was not disturbed. The attitude displayed by the Corporation was reasonable throughout. Where it saw justification, in any demand, it conceded and as the hearings went on, most of the payments due under the conceded demands, were made and it promised to make rest of the payments. The Corporation had a gigantic task after nationalization. Its activities are spread over the whole country and even in some countries beyond, *e.g.*, Pakistan, Ceylon and Nepal. It inherited the business from eight airlines companies which had varying terms and conditions of employment for their staff. It had to evolve a uniform pattern for the whole. Within 4½ years of its existence, it has covered a large field in stabilising the working of the Corporation by fixing time scales and standard force, by categorising the employees, by framing rules and regulations regarding the service conditions and by issuing orders and circulars on the subject. It tried its best to solve amicably the dispute by entering into agreements with the unions. Sri Y. N. Verma, Secretary of the Corporation, was present on most of the dates of hearing and I could see that his intervention on many occasions solved knotty problems which arose in the course of the hearing. He evinced a firm

grasp of the working and administration of the Corporation and an attitude of reasonableness, which goes a great way in solving industrial disputes. To Sarvasri Vimadlal and Buch, learned counsel for the parties, I am deeply beholden for the assistance rendered by them in this huge case, which required a mass of documents to be dealt with and a discussion of a large number of topics.

(Sd.) BIND BASNI PRASAD,

LUCKNOW; *Presiding Officer,*

Dated the 19th February, 1958. *National Industrial Tribunal.*

[No. LRI-3(9)57.]

P. M. MENON, Secy.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1958